MEETING DATE: 4/16/07
ITEM NO: 10

COUNCIL AGENDA REPORT

DATE: April 11, 2007

TO: MAYOR AND TOWN COUNCIL

FROM: DEBRA J. FIGONE, TOWN MANAGER

SUBJECT: CONSIDER A REQUEST TO MODIFY A CONDITIONAL USE PERMIT FOR A RESTAURANT WITH ALCOHOL SERVICE (VIVA PRIMAVERA) TO EXPAND THE HOURS OF OPERATION, MODIFY THE OUTDOOR PATIO DINING AREA, EXPAND TO AN ADJACENT TENANT SPACE (FORMERLY HIGH TECH BURRITO), EXPAND TO FULL LIQUOR FOR VIVA A GO-GO AND ALLOW SERVICE OF ALCOHOL IN THE OUTDOOR SEATING AREA FOR VIVA A GO-GO, AND EXPAND APPROVED ENTERTAINMENT ON PROPERTY ZONED C-1. APN 523-01-012 AND 013. CONDITIONAL USE PERMIT U-07-006. PROPERTY LOCATION: **15960 AND 15970 LOS GATOS BOULEVARD.** PROPERTY OWNER: COLG, LP. APPLICANT: VIVA PRIMAVERA, LLC.

RECOMMENDATION:

1. Open and hold the public hearing and receive public testimony.
2. Close the public hearing.
3. Approve the Conditional Use Permit application with the required findings (Attachment 1) and subject to the proposed conditions (Attachment 2) (Motion Required).
4. Refer to the Town Attorney for preparation of the appropriate resolution.

BACKGROUND:

1. *15960 Los Gatos Boulevard (High Tech Burrito)*
   On May 5, 1997, the Town Council approved a Conditional Use Permit (CUP) for a high turn over sit down restaurant (See Exhibit C of Attachment 4) which allowed:

   - A total of 16 seats, indoors and outdoors;
   - Hours of operation from 10:00 AM to 10:00 PM;
   - Outdoor seating; and
   - Beer and wine service with meals, inside only.

PREPARED BY: BUD N. LORTZ, BNL/BT
Director of Community Development

Reviewed by: PSS Assistant Town Manager ✓ Town Attorney
____ Clerk Administrator ____ Finance ✓ Community Development

2. *15970 Los Gatos Boulevard (Café Primavera)*
On January 26, 2000, CUP Application U-99-11 was approved by the Planning Commission to operate a restaurant (Café Primavera) with outdoor seating and full liquor service at 15970 Los Gatos Boulevard (See Exhibit D of Attachment 4). The approval was for a quality restaurant which allowed:

- A total of 160 seats, indoors and outdoors;
- Hours of operation from 8:00 AM to 11:00 PM Monday through Thursday and 8:00 AM to 12:00 PM Friday through Sunday;
- Outdoor seating;
- Service of alcoholic beverages with meals;
- One private dining room for banquets and meetings; and
- Occasional, incidental, entertainment such as a piano or harp accompanist.

In February 2006, staff noticed recent construction activity at Viva Primavera and informed the applicant that the exterior modifications that were done to the outdoor dining area required Architecture and Site approval and that opening at 6:30 AM was not consistent with their approved hours of operation. On August 14, 2006, the applicant submitted an Architecture and Site application and an application to modify the two existing Conditional Use Permits.

DISCUSSION:

Viva Primavera has been operating at 15970 Los Gatos Boulevard since November of 2003. The following applications represent the applicant's requests to expand into an adjacent tenant space at 15960 Los Gatos Boulevard to operate Viva A Go-Go where High Tech Burrito previously operated. Viva A Go-Go will be operated in conjunction with Viva Primavera.

Architecture and Site
The applicant requested approval of an Architecture and Site application to expand and modify the existing outdoor dining area enclosure in the following manner:

- Modify and expand the existing railing and glass panels surrounding the existing outdoor dining area for Viva Primavera;
- Add a metal gate with glass and glass panels between the columns at the existing restaurant entry closest to the parking lot; and
- Continue the proposed railing, without the glass panels, to delineate the outdoor seating area for Viva A Go-Go.

Conditional Use Permit
The applicant (Viva Primavera) is requesting approval to modify the existing CUPs for 15960 and 15970 Los Gatos Boulevard to permit the following:

- Create an opening in the interior wall between the two tenant spaces and operate the existing quality restaurant (Viva Primavera) in conjunction with an approved high turn over sit down restaurant (Viva A Go-Go, formerly High Tech Burrito);
- Maintain the 176 seats (total previously approved for both restaurants) which includes indoor and outdoor seating and banquet/meeting rooms;
- Extending the hours as follows:

	Viva Primavera 15970 Los Gatos Blvd	Viva A Go-Go (formerly High Tech Burrito) 15960 Los Gatos Blvd.
Approved Hours	8AM - 11PM Monday thru Thursday 8AM - 12AM Friday thru Sunday	10AM - 10PM Seven Days a week
Proposed Hours	6:30AM - 11PM Sunday thru Thursday 6:30AM - 1AM Friday, Saturday, holidays, and evenings before holidays.	6:30AM - 11PM Sunday thru Thursday 6:30AM - 1AM Friday, Saturday, holidays, and evenings before holidays.

- Expanding from one to two private dining rooms that can be used for banquets and meetings or general dining;
- Expanding to full liquor for Viva A Go-Go and allow service of alcohol in the outdoor seating area for Viva A Go-Go; and
- Expanding approved occasional, incidental, entertainment such as a piano or harp accompanist to include Jazz trios and other live music.

Please see Exhibit F of Attachment 4 for further information regarding the applicant's justification for the proposed modifications.

Alcohol Service
The proposed hours of operation are 6:30 AM to 11:00 PM Sunday through Thursday and 6:30 AM to 1:00 AM Friday, Saturday, holidays and evenings before holidays. Additionally, the applicant is proposing to expand from beer and wine to full liquor for Viva A Go-Go and allow service of alcohol in the outdoor seating area for Viva A Go-Go.

In order to approve the proposed hours of alcohol service the Council must make the following findings, pursuant to the Town's Alcohol Policy (Exhibit B of Attachment 4), to allow alcohol service past 10 PM:

- Late night service will not adversely impact adjacent residential neighborhoods;
- The applicant does not have a history of complaints and non-compliance with local ordinances or the Alcoholic Beverage Policy; and
- The applicant has demonstrated a clear benefit to the community.

The Police Department has reviewed the applicant's proposals and has no concerns with the requests. This determination is based on the fact that there has not been a history of complaints on Viva Primavera, no separate bar will be permitted at Viva Primavera or Viva A Go-Go, and the proposed Conditions of Approval are adequate to ensure that the adjacent residential

neighborhood should not be adversely impacted. Council will need to consider if the three findings listed above can be made.

Entertainment
The currently allowed occasional, incidental entertainment (piano or harp accompanist) for Viva Primavera was approved before the Town adopted the existing Alcohol Policy. The Town's current Alcohol Policy requires that standards and a permit process be established for entertainment. To date, standards and a permit process have not been adopted. Viva Primavera currently has jazz trios and other live music at the restaurant primarily on Friday and Saturday evenings.

Staff presents the following options for the Council's consideration regarding the issue of entertainment:

- The Council could determine that the request for jazz trios and other live music is not an intensification and therefore is consistent with the previously allowed occasional, incidental entertainment; or
- The Council could determine that the request is an intensification of the previously approved entertainment and therefore cannot be approved because standards and a permit process have not been adopted for entertainment with alcohol service.

PLANNING COMMISSION:

Architecture and Site
At their February 28, 2007 meeting, the Planning Commission approved (voting 4-3) the applicant's Architecture and Site application requests to expand and modify the existing outdoor dining area enclosure as outlined above, with the following modification:

- Add a metal gate with glass and glass panels **approximately four feet back** from the columns at the existing restaurant entry closest to the parking lot.

Conditional Use Permit
Additionally, the Planning Commission reviewed the CUP modification requests at their meeting of February 28, 2007, voting 7-0 to recommend that the Town Council approve the applicant's requests with the following modifications:

- Full liquor should not be allowed at Viva A Go-Go;
  The Commission determined that the expansion to full liquor for Viva A Go-Go was not appropriate because the applicant had not presented an adequate plan outlining how alcohol service would be provided for Viva A Go-Go.

  The applicant has outlined the service of alcohol for patrons of Viva A Go-Go in Attachment 6. They propose that patrons who order alcoholic beverages at Viva A Go-Go will only be allowed to do so if a meal is purchased for dining on premises. When the

order is entered a ticket will be printed at Viva Primavera's bar register and the drink will be made by the bartender and subsequently delivered by a server.

- Hours should not be extended past the currently approved 12:00AM;
  The Commission determined that the hours should not be extended to 1:00 AM because adequate justification to grant this request was not provided.

- The expansion of entertainment should not be allowed.
  The Commission determined that the expansion of the approved entertainment was not appropriate because the request was not consistent with the Alcohol Policy.

The applicant has submitted a letter (Attachment 6) addressing the Commission's concerns which are outlined above.

ENVIRONMENTAL ASSESSMENT:

As required by Section 15301 of the State Environmental Guidelines as adopted by the Town that this project is Categorically Exempt.

FISCAL IMPACT:

None.

Attachments:

1. Required Findings (1 page)
2. Recommended Conditions of Approval (4 pages)
3. Verbatim Planning Commission minutes for the meeting February 28, 2007 (25 pages)
4. Report to the Planning Commission for the meeting of February 28, 2007 (without development plans)
5. Desk Item to the Planning Commission for the meeting of February 28, 2007 (1 page)
6. Letter from applicant, received April 10, 2007 (2 pages)
7. Development Plans (3 pages)

Distribution:

COLG, LP, 1631 Willow Street #225, San Jose, CA 95125, Attn: Elizabeth Smith
Viva Primavera, LLC, 15970 Los Gatos Boulevard, Los Gatos, CA 95032, Attn: Michael Franges

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REQUIRED FINDINGS AND CONSIDERATIONS FOR

15960-15970 Los Gatos Boulevard
Conditional Use Permit U-07-006

Requesting approval to modify an existing CUP for a restaurant with alcohol service to expand the hours of operation, modify outdoor patio dining area, expand to an adjacent tenant space, and expand approved entertainment on property zoned C-1. APN 523-01-012 and 013.
PROPERTY OWNER: Colg, LP
APPLICANT: Viva Primavera, LLC

FINDINGS

- As required by Section 29.20.190 of the Town Code for granting a Conditional Use Permit.

  The deciding body, on the basis of the evidence submitted at the hearing, may grant a conditional use permit when specifically authorized by the provisions of the Town Code if it finds that:

  (1) The proposed uses of the property are essential or desirable to the public convenience or welfare; and
  (2) The proposed uses will not impair the integrity and character of the zone; and
  (3) The proposed uses would not be detrimental to public health, safety or general welfare; and
  (4) The proposed uses of the property are in harmony with the various elements or objectives of the General Plan and the purposes of the Town Code.

- As required by the Town's Alcohol Policy, the deciding body shall make the following findings prior to approving an application for a Conditional Use Permit to serve alcoholic beverages past 10:00 PM:

  (1) Late night service will not adversely impact adjacent residential neighborhoods;
  (2) The applicant does not have a history of complaints and non-compliance with local ordinances or the Alcoholic Beverage Policy; and
  (3) The applicant has demonstrated a clear benefit to the community.

- As required by Section 15301 of the State Environmental Guidelines as adopted by the Town that this project is Categorically Exempt.

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CONDITIONS OF APPROVAL FOR:

<u>15960-15970 Los Gatos Boulevard</u>
Conditional Use Permit U-07-006

Requesting approval to modify an existing CUP for a restaurant (Viva Primavera) with alcohol service to expand the hours of operation, modify outdoor patio dining area, expand to an adjacent tenant space (formerly High Tech Burrito), and expand approved entertainment on property zoned C-1. APN 523-01-012 and 013.
PROPERTY OWNER: Colg, LP
APPLICANT: Viva Primavera, LLC

TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:
(Planning Division)

1. APPROVAL: This application shall be completed in accordance with all of the conditions of approval listed below and in compliance with the letter of justification (Exhibit F of Attachment 5) and plans (Attachment 7) approved in the report to the Town Council, unless modified by conditions contained herein. Any changes or modifications made to the approved plans shall be approved by the Director of Community Development or the Town Council, depending on the scope of the changes.
2. LAPSE FOR DISCONTINUANCE: If the activity for which the Conditional Use Permit has been granted is discontinued for a period of one (1) year the approval lapses.
3. USE: The approved use is for a quality restaurant in conjunction with a high turn over sit down restaurant.
4. NUMBER OF SEATS: The maximum number of seats for both restaurants shall not exceed 176 (total includes indoor, outdoor, and banquet/meeting rooms).
5. OUTDOOR SEATING: A physical delineation shall be installed for the outdoor seating to the satisfaction of the Director of Community Development, Chief of Police, and Director of Parks and Public Works.
6. OUTDOOR FURNITURE: Outdoor furniture shall be of high quality in terms of materials and appearance (plastic furniture is not permitted).
7. HOURS OF OPERATION: Maximum hours of operation for the restaurant shall be 6:30 AM to 11:00 PM Sunday through Thursday and 6:30 AM to **12:00 AM** Friday, Saturday, holidays and evenings before holidays.
8. ALCOHOL SERVICE **VIVA PRIMAVERA**: The service of alcohol for the **quality** restaurant is permitted only with meals. A meal is defined as a combination of food items selected from a menu (breakfast, brunch, lunch, or dinner). Appetizers such as popcorn, nachos, pretzels, potato skins, relish trays, etc. (hot or cold) are not meals. There shall be no separate bar for the restaurant.
9. **ALCOHOL SERVICE VIVA A GO-GO: The service of beer and wine for the high turn over sit down restaurant is permitted only with meals. A meal is defined as a combination of food items selected from a menu (breakfast, brunch, lunch, or dinner). Appetizers such as popcorn, nachos, pretzels, potato skins, relish trays, etc. (hot or cold) are not meals. There shall be no separate bar for the restaurant.**
10. LIVE ENTERTAINMENT: Occasional, incidental, indoor entertainment such as piano or harp accompanist is permitted at the quality restaurant location only.
11. NOISE: Amplified entertainment noise levels shall comply with the provisions of the Noise

Ordinance as set forth in Section 16.20.040 of the Town Code.

TO THE SATISFACTION OF THE CHIEF OF POLICE:

12. UNIFORMED SECURITY: Uniformed privately provided security guards may be required in or around the premises by the Chief of Police if alcohol related problems recur that are not resolved by the licensed owner.
13. CONSULTATION AND TRAINING: At the discretion of the Chief of Police, periodic meetings will be conducted with representatives from the Police Department for on-going employee training on alcoholic beverage service to the general public.
14. TRAINING MANUAL: The restaurant operator shall use an employee training manual that addresses alcoholic beverage service consistent with the standards of the California Restaurant Association.
15. DESIGNATED DRIVER PROGRAM: The restaurant operator shall actively promote a designated driver program such as complimentary non-alcoholic beverages for designated drivers.
16. POSTING OF TAXICAB TELEPHONE NUMBERS: Taxicab telephone numbers shall be posted in a visible location.

TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:
(Building Division)

17. PERMITS REQUIRED: A building permit shall be required for the restaurant expansion and alterations to the existing patio area. Separate permits are required for electrical, mechanical, and plumbing work as necessary.
18. CONDITIONS OF APPROVAL: The Conditions of Approval must be blue-lined in full on the cover sheet of the construction plans. A compliance memorandum shall be prepared and submitted with the building permit application detailing how the Conditions of Approval will be addressed.
19. SIZE OF PLANS: Four sets of construction plans, maximum size 24" x 36."
20. TITLE 24 - COMMERCIAL: For any proposed tenant improvements, on-site general path of travel shall comply with the latest California Title 24 Accessibility Standards. Work shall include, but not be limited to, accessibility to building entrances from parking facilities and sidewalks.
21. NONPOINT SOURCE POLLUTION STANDARDS: The Town standard Santa Clara Valley Nonpoint Source Pollution Control Program shall be part of the plan submittal as the second page. The specification sheet is available at the Building Division Service Counter for a fee of $2 or at San Jose Blue Print.
22. PLANS: The construction plans shall be prepared under the direct supervision of a licensed architect or engineer. (Business and Professionals Code Section 5538)
23. APPROVALS REQUIRED: The project requires the following departments and agencies approval before issuing a building permit:
    a. Community Development - Planning Division: Joel Paulson at 354-6879
    b. Santa Clara County Fire Department: (408) 378-4010
    c. West Valley Sanitation District: (408) 378-2407
    d. Environmental Health Department: (408) 918-3400

TO THE SATISFACTION OF THE DIRECTOR OF PARKS AND PUBLIC WORKS:
(Engineering Division)

24. GENERAL. All public improvements shall be made according to the latest adopted Town Standard Drawings and the Town Standard Specifications. All work shall conform to the applicable Town ordinances. The adjacent public right-of-way shall be kept clear of all job related dirt and debris at the end of the day. Dirt and debris shall not be washed into storm drainage facilities. The storing of goods and materials on the sidewalk and/or the street will not be allowed unless a special permit is issued. The developer's representative in charge shall be at the job site during all working hours. Failure to maintain the public right-of-way according to this condition may result in the Town performing the required maintenance at the developer's expense.
25. ENCROACHMENT PERMIT. All work in the public right-of-way will require a Construction Encroachment Permit. All work over $5,000 will require construction security.
26. PUBLIC WORKS INSPECTIONS. The developer or his representative shall notify the Engineering Inspector at least twenty-four (24) hours before starting any work pertaining to on-site drainage facilities, grading or paving, and all work in the Town's right-of-way. Failure to do so will result in rejection of work that went on without inspection.
27. SILT AND MUD IN PUBLIC RIGHT-OF-WAY. It is the responsibility of contractor and home owner to make sure that all dirt tracked into the public right-of-way is cleaned up on a daily basis. Mud, silt, concrete and other construction debris SHALL NOT be washed into the Town's storm drains.
28. RESTORATION OF PUBLIC IMPROVEMENTS. The developer shall repair or replace all existing improvements not designated for removal that are damaged or removed because of developer's operations. Improvements such as, but not limited to: curbs, gutters, sidewalks, driveways, signs, pavements, raised pavement markers, thermoplastic pavement markings, etc. shall be repaired and replaced to a condition equal to or better than the original condition. Existing improvement to be repaired or replaced shall be at the direction of the Engineering Construction Inspector, and shall comply with all Title 24. Disabled Access provisions. Developer shall request a walk-through with the Engineering Construction Inspector before the start of construction to verify existing conditions.
29. SANITARY SEWER LATERAL. Sanitary sewer laterals are televised by West Valley Sanitation District and approved by the Town of Los Gatos before they are used or reused. Install a sanitary sewer lateral clean-out at the property line.
30. SANITARY SEWER BACKWATER VALVE. Drainage piping serving fixtures which have flood level rims less than twelve (12) inches (304.8 mm) above the elevation of the next upstream manhole and/or flushing inlet cover at the public or private sewer system serving such drainage piping shall be protected from backflow of sewage by installing an approved type backwater valve. Fixtures above such elevation shall not discharge through the backwater valve, unless first approved by the Administrative (Sec. 6.50.025). The Town shall not incur any liability or responsibility for damage resulting from a sewer overflow where the property owner or other person has failed to install a backwater valve, as defined section 103(e) of the Uniform Plumbing Code adopted by section 6.50.010 of the Town Code and maintain such device in a functional operating

condition. Evidence of West Valley Sanitation District's decision on whether a backwater device is needed shall be provided prior to issuance of a building permit.

31. OUTDOOR TRASH ENCLOSURES. Outdoor trash enclosures shall be covered and area drains connected to the sanitary sewer system shall be provided.

32 GREASE TRAPS. Meet all requirement of the Santa Clara County Health Department and West Valley Sanitation District for the interception, separation or pretreatment of effluent.

33. CONSTRUCTION NOISE. Between the hours of 8:00 a.m. to 8:00 p.m., weekdays and 9:00 a.m. to 7:00 p.m. weekends and holidays, construction, alteration or repair activities shall be allowed. No individual piece of equipment shall produce a noise level exceeding eighty-five (85) dBA at twenty-five (25) feet. If the device is located within a structure on the property, the measurement shall be made at distances as close to twenty-five (25) feet from the device as possible. The noise level at any point outside of the property plane shall not exceed eighty-five (85) dBA.

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A P P E A R A N C E S:

Los Gatos Planning Commissioners:	Joanne Talesfore, Chair John Bourgeois Michael Kane Phil Micciche Tom O'Donnell Steve Rice Marico Sayoc
Assistant Director of Community Development:	Randy Tsuda
Town Attorney:	Orry Korb
Transcribed by:	Vicki L. Blandin (510) 526-6049

P R O C E E D I N G S:

CHAIR TALESFORE: I would like to call up the applicant for Agenda Item #4, which is at 15960-15970 Los Gatos Boulevard. It's for Architecture and Site Application S-07-009, and a Conditional Use Permit U-07-006. I'd like us just to do the whole discussion, but then I would like to have us have two separate motions, and I think the motion that should come first would be the conditional use permit, and then we'll go to the architecture and site as motions, in that order. Thank you.

COMMISSIONER MICCICHE: I would have one question: Would they want the conditional use permit if we were to reject the A&S?

CHAIR TALESFORE: Well, that's a good question. I don't know. We could reverse it.

COMMISSIONER MICCICHE: Yeah.

CHAIR TALESFORE: All right, you want to reverse it? I want to hear your comments, Commissioner Micciche. We can do that. I mean it could work the other way as well. If I don't get the conditional use permit, I wouldn't make the changes. Commissioner Sayoc.

ATTACHMENT 3

COMMISSIONER SAYOC: Where would the alcohol recommendation fall?

CHAIR TALESFORE: Under the CUP.

COMMISSIONER SAYOC: Under the CUP? Okay.

CHAIR TALESFORE: All right, so we will take it in the order that it's in then, as far as motions. All right, that being said, Beau Jacob.

BEAU JACOB: Yes, my name is Beau Jacob and I represent the owners Viva Primavera, the restaurant in the Cornerstone Shopping Center, and I guess the good news is that our request for the Planning Commission today does not call for the removal of any trees, so I believe that will make it easier for you.

CHAIR TALESFORE: Thank you.

BEAU JACOB: I guess it was in November of 2003 when the current owners took over the operations at the 15970 location, and we've experienced great success, actually beyond what we had anticipated, and I attribute a lot of that success to the concept that Jeff Hanson, our Operations Manager and part owner put together. We basically took over an existing restaurant that had suffered financial difficulties, and all we did was change the concept; painted the walls, implemented some new food dishes, incorporated live jazz trios on Friday and Saturday nights, and appeared to be greatly received by the community.

It's been a wonderful experience, and when the opportunity came up to expand into the location next door, we saw that as a great way to expand our offering to the community, provide some high-end fast food for people to enjoy the taste of (inaudible), get it on the run and take it to go, and just enjoy what we have to offer.

I think a lot of the issues that are going to come up tonight deal with the service of alcohol. We have a type 47 liquor license that allows us to serve beer and wine and liquor on premises, and we're hoping to take that liquor license and expand that into the place that was occupied by High Tech Burrito. They did have a beer and wine license there, so we're not asking for anything more than what was being offered at High Tech Burrito. The Alcohol and Beverage Commission—we've already discussed it with them—have indicated they're going to leave it up to the Town of Los Gatos; if they say yes, they have no problem with us taking our type 47 license next door and serving alcohol out of that location.

One thing I would like to add is that there have been no complaints from the police department, though Joel's report to the Commission does indicate that the police have reviewed the application and don't have any issues with what we're proposing and requesting before the Town of Los Gatos.

I would like to point out that one of our other requests is to expand our hours of operation. Our request is

completely in line with the Town's alcohol policy, and I would add that in reviewing the resolution of the Town Council when they adopted the amended alcohol policy, they said that the Town Council wanted to balance the regulation of alcohol beverage service and the production of residential neighborhoods with the goal of maintaining a vibrant and successful downtown and commercial areas throughout Los Gatos, and we feel that what we have to offer completely complies with the goals of the Town Council in providing a vibrant place for the community to go and dine and have a wonderful experience.

I do know that there are going to be a number of questions that are presented by the members of the Planning Commission, and I may be able to answer some of those. If I can't answer those, I would like to defer to Elizabeth Smith, who represents the property owners, or Jeff Hanson, who is our Operations Manager, who might have some detailed information to provide appropriate answers to your questions.

CHAIR TALESFORE: Mr. Jacob, are you finished?

BEAU JACOB: Yes.

CHAIR TALESFORE: Thank you. I may have not heard you, but could you tell us your relationship to this restaurant?

BEAU JACOB: Well I represent the owners. I am their attorney.

CHAIR TALESFORE: You're their attorney. Thank you.

BEAU JACOB: And also their financial advisor, business advisor, and I keep a close eye on their financial records.

CHAIR TALESFORE: All right. So Commissioners, if you do have questions, there are other people that can answer them if Mr. Jacob cannot answer them. All right, and I didn't see who was first. Was it Commissioner Micciche? Yes.

COMMISSIONER MICCICHE: Just a question so we're going in the right order here. If the A&S is approved and the conditional use permit hours were not extended, would you still go ahead with the expansion?

BEAU JACOB: Yes, we would.

COMMISSIONER MICCICHE: You would, so us going with the A&S first seems to make sense then. Okay. Thank you.

CHAIR TALESFORE: Thank you. Commissioner Bourgeois.

COMMISSIONER BOURGEOIS: I know at High Tech they're allowed to sell beer and wine. You said you weren't asking for anything more than they have, but I thought you were asking for a full liquor?

BEAU JACOB: A full liquor. Yes, that is correct.

COMMISSIONER BOURGEOIS: Okay. I just wanted to clarify that. And I also had a question about the existing bar in the restaurant. Is that a standalone bar or is it to serve alcohol with meals only?

BEAU JACOB: It's part of the restaurant. We do serve meals at the bar. That is one of the requirements, that we do serve meals with alcohol, and that's certainly what we encourage.

COMMISSIONER BOURGEOIS: That's in the existing CUP?

BEAU JACOB: Yes.

CHAIR TALESFORE: Did that answer your question, Commissioner Bourgeois, about a standalone bar? Okay. Commissioner Rice, did you have your hand up?

COMMISSIONER RICE: I did, but actually I think I was after Commissioner O'Donnell. I don't care. I can go whenever.

COMMISSIONER O'DONNELL: You can go first; I'll go second.

COMMISSIONER RICE: Just to be clear, with Viva a Go Go, the intent is for primarily take out?

BEAU JACOB: No. I think we have room for 16 seats within that place (inaudible) and eat the food or be able to take it to go.

COMMISSIONER RICE: Okay, I thought I either heard or read something about takeout. Second question is did you

read our Consulting Architect's perspective on the exterior modifications?

BEAU JACOB: I did, yes.

COMMISSIONER RICE: Did you have any comment on those?

BEAU JACOB: Well that's one area that I think that Elizabeth Smith has great knowledge on and I think she would be able to provide you with the best answers to any questions you may have relating to the Consulting Architect's comments.

COMMISSIONER RICE: Okay. Is she on the speaker list?

CHAIR TALESFORE: Yes, she is.

COMMISSIONER RICE: Okay, then I can hold those, because that's where a number of my questions are. Thank you.

CHAIR TALESFORE: All right. Thank you. Commissioner O'Donnell, and then Commissioner Sayoc.

COMMISSIONER O'DONNELL: I want to understand the concept. I've been to the restaurant a number of times and enjoyed myself there, so I understand your operations. You're going to knock a wall out, is that what you're going to do?

BEAU JACOB: Well in front of the bar there's about 10' of space. Our intent was to open that up to allow free access to either place through the restaurant.

COMMISSIONER O'DONNELL: But this other place, which was the taco place or whatever it was, I guess I'm a little confused on the full liquor license for that portion. Is your concept that really what it would be is an expansion of the existing restaurant with the capability to serve takeout?

BEAU JACOB: That is correct. And there will be a separate menu for the takeout food on the other side. If they want to order takeout food off the menu from the main restaurant, they could do that from that side as well.

COMMISSIONER O'DONNELL: Even though it's named "Viva a Go Go," I guess I was confused. I thought most of the concept was to serve food off-site. Well, do you have an expectation of what percentage of the business would be on-site versus off-site?

BEAU JACOB: That would be something that possibly Jeff Hanson might have worked up in our financial plan for the new place. We kind of took some estimates based upon what we saw taking place at the High Tech Burrito on what kind of customer volume we might anticipate, but we don't really anticipate how many people are going to stay and eat and how many people are going to take it off-site.

COMMISSIONER O'DONNELL: People in this addition to the restaurant would be serviced from the existing bar?

BEAU JACOB: Yes, as far as probably the alcohol, yes. We might have a cooler with beer and wine inside the

High Tech Burrito place for them to grab it there so they don't have to go around to the other side to get it.

COMMISSIONER O'DONNELL: Thank you.

CHAIR TALESFORE: Commissioners, I can ask Mr. Hanson or anyone else to fill a card out and come up if you would like that. In the meantime, Commissioner Sayoc.

COMMISSIONER SAYOC: My first question is have neighboring residents been notified of the proposed alcohol change as well as the hour change?

BEAU JACOB: It was my understanding that they were.

CHAIR TALESFORE: Would Staff like to comment on that, please?

SANDY BAILY: Yes, we send it out to within 300'.

CHAIR TALESFORE: And no one called or wrote letters obviously; we didn't have any.

COMMISSIONER SAYOC: A follow-up question. Actually I'm going to ask Commissioner O'Donnell to clarify.

COMMISSIONER O'DONNELL: I'm sorry, just on that point, won't it have to be renoticed for the ABC license?

SANDY BAILY: The ABC has some different (inaudible). Are you familiar with them?

JOEL PAULSON: No, I'm not familiar with ABC, but they will have to go through their separate process. The Town does not get involved in that.

BEAU JACOB: Yeah, and we've actually begun that process already, and according to the information that we have received from the ABC, they're going to just wait for the decision from the Town of Los Gatos, but they approved it and they were just going to allow our existing type 47 license to extend into the new place.

COMMISSIONER SAYOC: My other follow-up to that: Does that also include renters? Because I know behind it it's a lot of duplexes that are just renters.

SANDY BAILY: Yes, it's property owners and tenants.

COMMISSIONER SAYOC: And actually I do have one more question. Could you explain the alcohol service a little bit more, especially with Viva a Go Go. Can people eating at Viva a Go Go go and buy a drink at the bar, then bring it back? How do you expect diners to get their alcohol?

CHAIR TALESFORE: Would this be an appropriate time for ask Mr. Jeff Hanson?

BEAU JACOB: This might be the perfect time for Mr. Hanson to come up and help out with some of these questions.

CHAIR TALESFORE: I'm going to call Mr. Jeff Hanson up. I would take it that your presentation is finished? Will you have time to come back up after we're finished with our questioning?

BEAU JACOB: Absolutely.

CHAIR TALESFORE: And hearing from the other audience members.

BEAU JACOB: I will be here until this session is closed.

CHAIR TALESFORE: Okay. Thank you very much. Oh, you had a follow-up question, Commissioner Kane?

COMMISSIONER KANE: On the notice question, when we did the Verizon division of their building and trucks and that sort of thing, practically all of the neighbors from Camellia Drive showed up. So when you say 300', I don't know exactly how much of that neighborhood is inside that 300' envelope. Is that realistic for neighbors to be concerned about a bar?

CHAIR TALESFORE: Joel Paulson will go over and show us on the maps that are on the Town. Is that what you're doing? Okay, he's going to be right back.

COMMISSIONER RICE: A point of clarification; the bar exists?

CHAIR TALESFORE: Yes, the bar does exist.

COMMISSIONER KANE: The notice of potential expansion, and the last time we did anything with that street, they all showed up, so I just wanted to find out how many of them may have been noticed.

CHAIR TALESFORE: In the meantime can we go ahead? Thank you, Mr. Jacob, and I have a card I think from Jeff Hanson.

JEFF HANSON: Pardon my cold tonight. I've gotten this thing out, but I've heard a lot about hillside property.

Just to start off, a little bit about who we are and what we've been from the beginning. I think those of you that have dined in the restaurant know that Viva is a very family-oriented restaurant, and from the start when we had our first meetings with our staff, that's what we said. Get used to it, here's what you're going to see: You'll see kids, families with kids, parents having a glass of wine and filet mignon and the kids are having their penne pasta or the pizza, and right next to them are fine diners having a $150 bottle of Staglin cabernet and fresh fish or prime rib. And that's the way Viva's turned out to be. It has always kept that image of being a restaurant that was family oriented, no problems.

So as we move ahead to the new venture, the same thought, the same soul, was put into that new venture, which is that we wanted that same image to carry over to the new restaurant.

I'll try to go back to the question that was asked originally about the dining between the two. I think the way we set this up originally, because we did take a look at

what High Tech Burrito was doing in sales, and we looked at that and said well why make it Viva if we see that there's this potential of doing this amount of sales as a standalone restaurant?

So what we did was create this venue, which is Viva a Go Go, which simply is a dual form word, which means go-go, which kind of takes you back to the 50s and 60s, which will be our mode of operation; you'll see pictures of the Temptations. We'll do a lot of things with the 50s and 60s real comfort feel to the restaurant, and at the same time go-go was the word meaning, "to go." So that's basically what that restaurant is, but it has its own menu, it has its own operation. We plan on driving that business to do its own sales for people that don't want to dine at Viva that would rather come in and grab sandwiches or wraps or an entrée or salads, and they can just take off and move home, with a different menu than Viva.

At the same time, we do have the situation where at happy hour times at Viva, and certain other times, it happens maybe a couple days a week, we would love to have a little bit of overflow where people can still sit down and enjoy their salads. And by the way, our mix of salads and liquor at Viva right now is 70%-plus food and about 29% to 30% combination of liquor and wine. So our intent is to continue that same kind of a deal where we want to move food, and those of you that have dined and had happy hour

there, you know that the appeal at happy hour is that wonderful big salad for $5.00, and our whole menu is like that.

So in essence, that's kind of the thought work behind combining the two restaurants; the both stand on their own, but there's a little bit of overflow between the two.

CHAIR TALESFORE: Thank you. Do we have questions of Mr. Hanson? Commissioner Kane, and then Commissioner Bourgeois.

COMMISSIONER KANE: I want to go back to Commissioner Bourgeois's question, because I thought I had the answer and I didn't get it. For Staff, the bar that's in the Viva premises, is that a bar that is under the alcohol policy that requires meals?

JOEL PAULSON: Yes. They do not have permission to have a standalone bar. All alcohol service must be provided with meals.

COMMISSIONER KANE: And Mr. Hanson, tell me why you have to have full service in Viva a Go Go. You have beer and wine that the Staff Report identifies it as a high-quality take-out with counter. I don't know what high-quality,gourmet ketchup, I don't know, but why would I need a martini while waiting for my hamburger?

JEFF HANSON: You wouldn't need a martini, but we have a lot of people that are fighting for a seat right now

that come in there at 5:30-6:00 o'clock and can't get a seat. Just during that one window, which is between about, say, 5:00 and about 6:30, and that's it.

COMMISSIONER KANE: So the restaurant people would expand into Viva a Go Go?

JEFF HANSON: I sure would love to see them get an opportunity to get a seat.

COMMISSIONER KANE: I thought that was separate menu.

JEFF HANSON: It is a different menu.

COMMISSIONER KANE: Thank you.

JEFF HANSON: But I feel like I didn't answer that well enough.

COMMISSIONER KANE: You answered it.

JEFF HANSON: Well part of the decision making here is you have two restaurants, and when we put this idea together, the idea was well how do you police that? You have one menu there, one menu here. The answer is you don't, because what's going to end up happening, some way or another someone is going to find a way to grab one of our salads from next door and eat it there. But I think there are enough alternatives at the restaurant itself where we will find that a lot of those same diners would have a cocktail as well as their food probably from Viva a Go Go.

COMMISSIONER KANE: I frequent Viva frequently.

JEFF HANSON: Thank you very much.

COMMISSIONER KANE: And I'll come see you personally next time I come in.

JEFF HANSON: Okay, please do.

COMMISSIONER KANE: The Town ordinance on alcohol is not in favor of unregulated expansion; it discourages it. I'm just trying to see, and I'm not hearing, the necessity for a full bar over in the take-out place, when you've already got the beer and the wine, and I don't think diners who come in for fine dining would want to go over for burgers, because there was a seat available. I think that's an unregulated expansion of full-service alcohol.

CHAIR TALESFORE: Is there a question?

COMMISSIONER KANE: Don't you?

JEFF HANSON: I think looking at it from an operator's standpoint, my job is to take care of people, and when I see probably all Jan Philips and her crew, they come in, they can't find a seat. They would love to sit down and enjoy a happy hour cocktail and food, and if I can at least swing them into that area for one hour, then I can take care of a lot of people that aren't finding seats.

CHAIR TALESFORE: Thank you. Commission Bourgeois was next, and then Commissioner Sayoc.

COMMISSIONER BOURGEOIS: I'm still having a little trouble understanding the logistics of that. So I come in, I want to go to Viva; there are no seats. I go over to Viva a Go Go; I want to have a cocktail. Do I go to the counter and

order it? Do I sit down? Is there a waiter? Do I go to the bar and bring it in? How does that work?

JEFF HANSON: We will have people that can actually take those orders for them. We have servers that are in that area that can actually go and help that person.

CHAIR TALESFORE: I would order at the counter or I would sit down and be waited on?

JEFF HANSON: It depends. If you wanted to order the Viva a Go Go food, you'd go to the counter, and we are going to try to promote that. Now remember, this is a small window. This probably happens once or twice a week, where we need that overflow for just a little bit. But as we grow as a business, I would love to be able to take care of people that might need a seat and want a martini with their salad.

CHAIR TALESFORE: Commissioner Bourgeois, are you finished? Commissioner Sayoc.

COMMISSIONER SAYOC: Your outdoors seating, do they have to be seated there by a hostess? I'm trying to remember how that works?

JEFF HANSON: For the new entity?

COMMISSIONER SAYOC: For both the old and the new.

JEFF HANSON: For Viva, they will be seated by a hostess. For Viva a Go Go, they're on their own.

COMMISSIONER SAYOC: And you are requesting that alcohol be permitted outside, is that correct?

JEFF HANSON: As long as it's within the perimeter boundary, what we designed.

COMMISSIONER SAYOC: Right, of both Viva a Go Go as well as Viva?

JEFF HANSON: Of both, yes.

CHAIR TALESFORE: Do I have any other questions? Commissioner O'Donnell.

COMMISSIONER O'DONNELL: I'm sorry, you probably already answered this, but you are going to have waiters or waitresses in the addition too? Or do they go up to the desk?

JEFF HANSON: Let me take that. I really want to discourage anybody waiting tables in the new venue. I think those people are really going to do their own legwork. Once in a while we might try to help, but in most cases Viva a Go Go, when they're seated there, they're on their own.

COMMISSIONER O'DONNELL: How do they get a drink?

JEFF HANSON: They would have to go to the bar to order it.

COMMISSIONER O'DONNELL: So you're going to have all these people, you've got a crowded Viva restaurant, you need overflow, now you've got people coming back in and standing at the bar? Is that what you're saying?

JEFF HANSON: No.

COMMISSIONER O'DONNELL: That's what I heard. Can you clarify that?

JEFF HANSON: What I'm saying is this: When you create a new restaurant, and I've seen this before many times, you can all of the most splendid, wonderful ideas on what's going to happen, until you open your doors. This happened at the Tech Museum, when I was with Café Primavera, and we thought we had a great way to handle taking care of the crowds, and we couldn't. We discovered after the first week of operation exactly what we needed to do, and I see Viva being the same way in that I'm going to come in with a plan of action. I would rather not see people having to get up and move, you know, come in, pile up at the bar, but if I can dedicate a person to help out, I will. But again, I won't be able to tell until we have that open for about a week or two and I can watch what is really going to happen.

COMMISSIONER O'DONNELL: The reason I'm asking the question, we have to decide on that whether we're going to recommend approval, or approve it, whatever we're dealing with, and I personally am concerned today, not a week after you open, what we're approving.

And as I visualize it now after listening to you, we have overflow situations. People are now next door, they can't get a drink because there's no waiter or waitress over there; they've got to come back in the place where there was not enough room for them. That doesn't make a lot of sense from a planning standpoint. It may make great business for you, because you're going to roll with it, but I don't know

that we can say roll with it, and so that's why I was trying to pin you down a little bit. If in fact we're just going to build people up standing at your bar, I'm not sure that's a good situation from a regulator's standpoint. That's why I asked the question.

JEFF HANSON: And I understand your concern about it, and I think in some ways those people that know me and know the operation can trust that I will do the right things for the people and for the business. I've been at this for 40 years.

CHAIR TALESFORE: Thank you. Commissioner O'Donnell, you're finished. Commissioner Micciche.

COMMISSIONER MICCICHE: Let me ask a couple of questions of what's happening now and maybe we can lead a little clearer into this.

The existing small restaurant, the High Tech Burrito place that serves beer, the rule is that they can only order beer and wine if they eat the meal inside the restaurant. I believe that's the existing CUP, is that correct?

JEFF HANSON: I guess. Is it?

JOEL PAULSON: Yes, that's correct.

COMMISSIONER MICCICHE: All right. So the only thing you're adding here is they go up to the front now to order this beer and wine at the front of the place I assume, right?

JEFF HANSON: Yes.

COMMISSIONER MICCICHE: Could they order a drink there? I mean the same rules are going to apply. They can only drink beer, wine, or whatever, if we do approve this, inside that section of the restaurant?

JEFF HANSON: Yeah.

COMMISSIONER MICCICHE: That's the way I read the existing CUP. Is the following CUP going to have the same restrictions?

JOEL PAULSON: They will have to serve alcohol, whether it's beer and wine or full alcohol service, with meals. The two expansions they are asking for is to go to full liquor, and then to be allowed to serve full alcohol in the outdoor seating area with meals.

COMMISSIONER MICCICHE: But they would have to have it there; they can't take it with them?

JOEL PAULSON: Correct. This is not going to be a take out.

COMMISSIONER MICCICHE: Why can't they order it the same way they order the beer and wine then?

JEFF HANSON: They can.

COMMISSIONER MICCICHE: Okay, so they wouldn't have to walk over to the other bar.

JEFF HANSON: We'll have interfacing computers.

COMMISSIONER MICCICHE: Would somebody bring it to them then?

JEFF HANSON: That's what I'm saying. When we get into that situation, which again, does not happen that often, this happens maybe once to twice a week where I would need to do that, but I can dedicate a server in that section for watching a few people that decide (inaudible).

COMMISSIONER MICCICHE: So if it's important to the Commission that we understand that when somebody's going to order alcohol, if we expand this license, that they order it at the existing area where they order beer and wine now, that when they sit down then, that liquor would be brought to them where they're sitting?

JEFF HANSON: Yes.

COMMISSIONER MICCICHE: They don't take it themselves? I mean it's brought to them?

JEFF HANSON: Well again, trying to police people is not easy.

COMMISSIONER MICCICHE: See, my concern is that if they're going to sit outside, then I'm not sure how they're going to get that drink. Are they going to carry it out themselves?

JEFF HANSON: In most cases anybody that gets a drink, it will happen at Viva, not at Viva a Go Go. The majority of our business at Viva a Go Go is going to be dedicated to that.

COMMISSIONER MICCICHE: I understand the Viva part; it's Viva a Go Go that's got me confused. So I guess

what I'm hearing is we haven't thought that out, but we ought to do it now if people are concerned about it.

JEFF HANSON: Okay.

COMMISSIONER MICCICHE: So I mean right now how would you structure people getting a mixed drink at Viva a Go Go?

JEFF HANSON: I would dedicate a person to handling anybody that would like a cocktail, and in most cases those people would order at the computer, because we have interfacing computers between the two restaurants.

COMMISSIONER MICCICHE: So we could condition that there will be a person there to bring it to them?

JEFF HANSON: Sure.

COMMISSIONER MICCICHE: All right. Thank you.

CHAIR TALESFORE: I have a question. If I'm coming into Viva a Go Go to order food, and there's a long wait, and then I decide to order a drink and not have any food at your restaurant, would I be served?

JEFF HANSON: I think if the law said we could do that, I would, yeah.

CHAIR TALESFORE: Because I'm concerned about how you could enforce that or control that.

JEFF HANSON: Well, first of all, the waits should only happen at Viva, not at Viva a Go Go, because it's a much quicker restaurant; it's very different.

CHAIR TALESFORE: You could have 20 people in line.

JEFF HANSON: Right.

CHAIR TALESFORE: And I see the server and I say, "Hey, get me a drink."

JEFF HANSON: And what would you order?

CHAIR TALESFORE: Whatever. Alcohol, a martini, whatever; I don't drink.

JEFF HANSON: Got ya.

CHAIR TALESFORE: So that's my point.

JEFF HANSON: Okay.

CHAIR TALESFORE: Do we have any other questions of Mr. Hanson? Commissioner O'Donnell.

COMMISSIONER O'DONNELL: Let me ask a question of Staff. Is the fact now that the restriction on serving food is not a failsafe restriction? For example, there are a number of restaurants in town where one goes in to have dinner, but if you sit down at a bar—I can think of several restaurants in town in which it is permitted—they can't say oh wait a minute, you can't leave, you had a drink, now you have to have dinner, right?

SANDY BAILY: There are restaurants that have been in violation of their use permit.

COMMISSIONER O'DONNELL: The restaurant doesn't know when you come in and sit down and order a drink that you're waiting for dinner. A lot of people have dinner right

at the bar. Now if you stand up and say, "I'm not going to have dinner," what are they supposed to do? All I'm saying is if you go in and you're standing in line in Viva a Go Go and you say, "You know what? I don't think I'm going to order that hamburger now," I don't think that's a violation on their part. But I'm still troubled by this idea of we're going to make it up as we go along. I personally think it ought to be made up before we are asked to approve it.

CHAIR TALESFORE: Right. Do we have any other questions of this speaker? Seeing none, thank you very much. Next speaker card is for Elizabeth Cilker Smith.

ELIZABETH SMITH: Good evening. Thank you for having me here. I'm Elizabeth Cilker Smith and I reside at Withey Avenue in Monte Sereno.

As owners of Cornerstone Shopping Center, at the end of the day we want our visitors to feel special. However, we don't want them to sweat all the small stuff and problems, and Viva's patio has three problems. The first problem is sun. The second problem is wind and weather. And the third problem is customers that want to eat at it, and are eagerly asking to do that all the time.

So what do we do? The sun in the afternoon comes in with a blinding glare. The winds whisks down the entranceway, and as a customer is opening the door, the three to ten diners on the left-hand side who are innocently eating, get blasted with cold air. And then the diners that

are out on the patio are often uncomfortable by these elements and distracted from the fine dinner that's being served to them.

We came to you and we solved these problems by hanging retractable shades down that allow the sun to come through, but block the blinding glare, and then putting up glass panels in order to keep the wind and that cold air from coming in, and then a very attractive door that would not allow the air to come into Viva as the door is opened.

However, your consultant, Mr. Cannon, and I talked to him personally, feels that as you drive down the entranceway the view depth is distracted by a door that blocks the view and makes a very flat entranceway. So then Mr. Cannon then suggested that we create a hallway down to the patio with two adjacent side doors and not have a door. However, we need the door for the wind that comes in to the restaurant when that first door is opened.

So Mr. Paulson came out, and some of you came out, and had an alternative design, and that design was to bring the door within 8' of the present door. However, when that door is opened, the other side doors create a very congested and uncomfortable feeling; there are too many doors opening, and as both doors open there is no place to stand. So tonight I come forth to you with an alternative, slightly different plan.

CHAIR TALESFORE: Would you just hand it to Mr. Paulson and he'll hand it to us. Thank you very much. I'm not sure what you meant by, "some of you came out" and helped them redesign.

ELIZABETH SMITH: Mr. Paulson suggested an alternative design, and members of the Town had come out; maybe it was the Staff.

CHAIR TALESFORE: Thank you. Just so we're clear that it wasn't commissioners that came out and did that.

ELIZABETH SMITH: And the design that I've given you, we have put the attractive garden door, which does have glass, we've retracted it and established it 3.5' from the entranceway, so there's still a sense of depth.

Now I want to clarify to you that the door will have glass, though at present the doors at Viva do have glass and do reflect as the cars drive in, which all the glass does with the headlights and any of the sun. So we still have reflection, we still have glass, but we need the glass to protect against the wind; we need that barrier.

These doors are attractive; they give the pedestrians a sense of anticipation, a sense of almost mystery as you come into the garden area, which is our signature patio there. By allowing the doors, and establishing them at 3', we keep the volume of the height of the tower intact, and then we allow alignment of the design

from the façade from Whole Foods to continue on down in a straight line without any type of distraction.

We like to keep a clean and unencumbered space so the servers and the diners can move at ease. If we established a hallway as Cannon had suggested, we have to create two more doors; we'd actually have four doors in a very small area, not allowing the service to move at ease.

So I feel that this plan is a compromise and I would certainly hope that you would look at it seriously tonight. This is actually a picture of the door.

CHAIR TALESFORE: Hand that to Joel Paulson. Thank you.

ELIZABETH SMITH: Are there any questions?

CHAIR TALESFORE: I have a question. The gate detail, is that the one that's reflected on…

ELIZABETH SMITH: I'm passing it out. Yes.

CHAIR TALESFORE: Oh, it's not the one that's in…

ELIZABETH SMITH: It's the same one.

CHAIR TALESFORE: Exhibit H?

ELIZABETH SMITH: Yes.

CHAIR TALESFORE: On A2.0?

ELIZABETH SMITH: Yes.

CHAIR TALESFORE: Thank you.

ELIZABETH SMITH: The town that designed that was actually recommended. It's difficult for us because it causes a lot of detailed additional construction, whereas if

we put the doors3.5' feet from the columns, there's already a beam; it's very easy to construct the doors, and from a pedestrian point of view, it's very inviting, very enticing.

CHAIR TALESFORE: Do we have any questions for this speaker? Seeing none, thank you very much.

ELIZABETH SMITH: Thank you.

CHAIR TALESFORE: I will now call the applicant back up. Mr. Jacob, would you like to add anything? You have three minutes.

BEAU JACOB: I think they actually spoke it quite well, and we just respectfully pray that the Planning Commissioners consider our request and approve what we're hoping to do, because we feel like it's a benefit to the community.

We hope to continue to provide what we have to the community through charitable contributions and donations to various organizations, schools here in Los Gatos, and by allowing us to expand, hopefully we'll have additional funds and time and capital to continue to do the things we do for the community of Los Gatos. We certainly invite each and every one of you to come out and dine with us as often as possible.

CHAIR TALESFORE: Commissioners, does anyone have any questions of Mr. Jacob? No. Thank you very much. I'm going to close the public hearing and look to the commissioners for discussion, a motion, or questions of

Staff. Commissioner Rice, you were right up there. And then Commissioner Sayoc, and then Commissioner O'Donnell.

COMMISSIONER RICE: Question of Staff. The original restaurant, and I'm going to go back a ways, did not have outdoor seating at all, correct?

JOEL PAULSON: Both the original restaurants were approved for outdoors seating.

COMMISSIONER RICE: They were originally?

JOEL PAULSON: Yes.

COMMISSIONER RICE: And were the railing and the glass that is there part of that approval, or did that come later?

JOEL PAULSON: The railing and glass is new, which is what they're proposing to continue on the other sides. That was done in I believe 2005 or 2006.

COMMISSIONER RICE: Well, close enough. I mean that's fine. Okay, that's good for now.

CHAIR TALESFORE: Commissioner Sayoc.

COMMISSIONER SAYOC: I just wanted to see if there was an answer to the question of how far on the map the residents were notified?

JOEL PAULSON: I showed Mr. Kane. I can pass that notification list to each of you.

CHAIR TALESFORE: Would you like to see that now, Commissioner Sayoc?

COMMISSIONER SAYOC: At any point.

CHAIR TALESFORE: Okay. Thank you, Mr. Paulson. Commissioner O'Donnell.

COMMISSIONER O'DONNELL: The compromise location of the patio door, I understand the two comments. Our architect, I think, makes a good point, but on the other hand, I can understand the restaurant's difficulty.

As I look at this drawing that we were just given, the gate would be set back, I don't know how many feet that is, I think there was testimony it might be 4', but that may be wrong. But in any event, the drawing shows it set back and I can see the difficulty and I guess all I'm saying is I for one would support the set back on the door. So that for me is the easy part of this.

The more difficult part of this is while I'm very receptive and sympathetic to their request, I'm not satisfied that we have received a clear enough plan on how this is going to be done, and because of that it's sort of a "trust me" kind of thing, and that's not our job, and therefore on that one, I would be inclined to sending that back so somebody could come and tell us what they're going to do, and then we could decide whether we thought that was a good idea. So those are my two thoughts.

CHAIR TALESFORE: Commissioner Micciche.

COMMISSIONER MICCICHE: Would be consider doing it to the satisfaction of the Community Development Director, with direction?

CHAIR TALESFORE: Would you like me to poll the Commission on that?

COMMISSIONER MICCICHE: No, I'm asking the maker of the statement that.

CHAIR TALESFORE: Okay, Commissioner O'Donnell?

COMMISSIONER O'DONNELL: I get confused here. On liquor applications we make a recommendation to Council.

CHAIR TALESFORE: Yes.

COMMISSIONER MICCICHE: On the liquor, but not on the A&S.

COMMISSIONER O'DONNELL: I can't say I'm going to make the recommendation based on what somebody else decides.

COMMISSIONER MICCICHE: No, I'm saying the A&S isn't a recommendation.

COMMISSIONER O'DONNELL: But I didn't have a problem with the A&S.

COMMISSIONER MICCICHE: Oh, I thought you were referring to the A&S.

COMMISSIONER O'DONNELL: No, I was talking about (inaudible).

COMMISSIONER MICCICHE: Oh, I'm sorry.

COMMISSIONER O'DONNELL: I'm talking about the confusion, in my mind at least, with the service of essentially hard alcohol, and I'd just kind of like to know what we're approving, and we don't know.

COMMISSIONER MICCICHE: Could be suggest a method?

CHAIR TALESFORE: A method of what?

COMMISSIONER MICCICHE: Of serving.

CHAIR TALESFORE: I don't think that's our business.

COMMISSIONER O'DONNELL: Yeah, this is not our business.

CHAIR TALESFORE: We're here to evaluate and approve,or not.

COMMISSIONER MICCICHE: We can suggest it.

COMMISSIONER O'DONNELL: I really think the people who run the business, they run a very good business, I believe they know what they're doing. They've got to sit down and think about it, and then they've got to tell us what they want to do. It's not our business to run their business, and they're happy about that. So I'd kind of like to know after their considered reflection, what are they asking us? And I can tell you right away, if there's confusion in serving alcohol, they're asking the wrong people I think.

CHAIR TALESFORE: Okay Commissioner O'Donnell. Who is next? Who had their hand up? Okay, my comment is going to be in line with that. I thought Viva a Go Go was about food, and I'm hearing a lot of other things that it's about, and a lot of it's about accommodating overflow. He wasn't going to have a server in the beginning, but then they were going to. We had to go up to the counter and electronically order a

drink in Viva a Go Go. I mean I heard a lot of things. It makes me very uneasy.

I'm sure you're a wonderful manager, Mr. Hanson, and it's not about you, but if you just decide to go to Paris for the rest of your life, we cannot give you a CUP based on who you are. So I would agree, we need to see in black and white exactly how this is going to work, and I don't see that here.

On the A&S, I do think that the front gate, I liked what Mr. Cannon said and I totally agree with him. I think that front gate detail design, although lovely by itself, is out of character with the whole shopping center. I think that shopping center is beautifully designed and really sets a nice model and nice example of our town, and for me that doesn't work. But that's a minor issue. So that's where I am on that.

Okay, Commissioner Rice.

COMMISSIONER RICE: Just a question: Is the CUP a single all or nothing? For example, can we deal with the hours and deal with that?

CHAIR TALESFORE: I think it's everything in one, the CUP. It would be the hours, the alcohol service. It's the condition of it. And it would also be the entertainment, which I haven't heard about from any of the commissioners, and so if you'd like to comment.

COMMISSIONER RICE: I don't have a problem with that. Then what I'd like to suggest maybe is to continue this to our next meeting, and that might give our applicant an opportunity to refine some of the issues that he's heard about.

CHAIR TALESFORE: Okay, I will take that. Commissioner Micciche, would you like to make a comment?

COMMISSIONER MICCICHE: I would ask Staff if that's possible first.

JOEL PAULSON: Well the issue is you're only making a recommendation to the Council for the CUP, because it involves alcohol. So you could make recommendations that that issue with how the service goes is ironed out to the satisfaction of the Council, not the Community Development Director, to the Council, before they make their decision, and then as well as the hours, the entertainment, the other items. You can individually add direction for each of those items that they're requesting.

CHAIR TALESFORE: Right. We could do that. I would prefer that we have them come back to us. I would like to see what they're doing as well. Commissioner Rice, did you have something to add?

COMMISSIONER RICE: I tend to agree with the Chair in that I think our recommendations should be based on a little more than we have right now, and before we make a recommendation to the Council, if we can see it in two

weeks, or if that's full and we have to go four weeks, I'm hopeful that that's not burdensome on the applicant, but I can't pass this to Council the way it is, or even with some recommendations.

CHAIR TALESFORE: Commission Bourgeois had his hand up, then Commissioner Kane, and then Commissioner O'Donnell.

COMMISSIONER BOURGEOIS: I think we wanted to deal with this in two pieces, so I'm going to make a motion on the A&S. That's how we wanted to go first?

CHAIR TALESFORE: Yes.

COMMISSIONER BOURGEOIS: So I'm going to make a motion to approve Architecture and Site Application S-07-009, based on the considerations, and I would like to have the compromise design that was just handed out to us.

CHAIR TALESFORE: We have a motion to approve the Architecture and Site with the compromise design that was just handed out to us, which is reflected in #1, whatever, and I have a second as well. So I'm going to call the question. Oh, yes, a comment by Commissioner Kane.

COMMISSIONER KANE: The maker of the motion, does that include modify and expand existing rails and glass surrounding the areas, defining a new outdoor eating area?

COMMISSIONER BOURGEOIS: Yes.

CHAIR TALESFORE: All right. I'm going to call the question. So all those in support of Architecture and Site,

raise your hand and say aye. That would be four. And all those opposed say nay. That would be three, so it passes 4-3.

SANDY BAILY: Let me just state for the record this decision is appealable to the Town Council and appeal forms are available upstairs.

CHAIR TALESFORE: Thank you very much. Commissioner O'Donnell.

COMMISSIONER O'DONNELL: On the second matter, the CUP, I would suggest that we essentially remand it to the applicant and ask the applicant to provide us with further details on the plan in particular for the service of alcohol in the Viva a Go Go premises, and that we have expressed our concerns, and I think they ought to be fairly clear what they are. I would like to know what their plan is to overcome those questions that we have, and I would suggest that we then set it for a date certain and consider it.

CHAIR TALESFORE: That was a motion, correct?

COMMISSIONER O'DONNELL: Yes.

COMMISSIONER RICE: I'll second.

CHAIR TALESFORE: Okay, and that motion is seconded by Commissioner Rice. Do we pick a date certain first? Okay. Any discussion on this? Commissioner Micciche.

COMMISSIONER MICCICHE: I'd like to ask if there are any other comments regarding the entertainment, the

hours and so forth, so that they can be addressed all at the same time.

CHAIR TALESFORE: Yes.

COMMISSIONER MICCICHE: So if anybody has that, I'd like to hear it voiced. I'm just asking that all of us consider that.

COMMISSIONER RICE: I'm fine with that. That's my comment.

CHAIR TALESFORE: You're fine with the hours?

COMMISSIONER MICCICHE: You're fine with everything else?

COMMISSIONER RICE: Yes, I'm okay with the hours and the entertainment.

CHAIR TALESFORE: And Commissioner Bourgeois.

COMMISSIONER BOURGEOIS: The only thing that gives me concern is the full liquor in the Viva a Go Go section, and I'm probably not going to support the motion, because I'd like to just approve the CUP except for that portion. Send it to Council with that recommendation, and at that time, if they have more detail and can convince Council to change that, then I think we've achieved what we wanted to achieve. They've heard our comments, they'll come to Council with more detail, knowing that we recommended approval of the CUP, except for that portion of it, and Council can do what they please. So that would be my preference.

COMMISSIONER RICE: That was what I asked earlier, if we could bifurcate the issue and say that we're okay with this, but not okay with this, and I got no, we've got to handle the whole thing in total. So maybe I misunderstood the answer, or the question was misunderstood.

CHAIR TALESFORE: Staff, can you comment on that?

SANDY BAILY: Well I think it was the misunderstood question and the answer together.

CHAIR TALESFORE: Okay then, could we have the answer now?

ORRY KORB: Well let's just simply say that the A&S first of all is separate and apart from the CUP.

COMMISSIONER MICCICHE: Yeah, we did that.

ORRY KORB: You've taken care of that. You've got a number of issues related to the CUP. The alcohol is tied in with them, so it makes sense, particularly because entertainment is tired in with alcohol service and there are some policies that address that, so it makes sense to bundle all of the CUP issues and send them off to Council with your recommendation. But you can recommend denial for the full liquor for Viva a Go Go as part of the recommendation.

COMMISSIONER RICE: But I don't want to.

CHAIR TALESFORE: Okay, wait a minute. Can I have some order here? Now wait, are you continuing your line of questioning to the Staff? Commissioner Rice, and then Commissioner O'Donnell.

COMMISSIONER RICE: I don't want to deny the alcohol. My goal is to be able to send to Council a recommendation for approval of whatever we have seen. Right now the only thing that concerns me, of what we have seen for the CUP, is the way the alcohol is going to be served in Viva a Go Go, so my initial thought was to continue this to a date certain, for a month out, and say gotta come back with a little bit better handle on how the alcohol is going to be served. If we're comfortable with that, then we'll send it off to Council with a recommendation for approval as we have seen it at that point.

CHAIR TALESFORE: Okay, that is what I thought I understood. Commissioner O'Donnell.

COMMISSIONER O'DONNELL: I think that was my motion, so that's what I understood too. But I just wanted to say this: While I think Commissioner Bourgeois's suggestion is clearly a valid one, I feel our job, our obligation, is to try to understand something before we pass it on to the Council. I don't understand this proposal and I don't think the applicant did either. I think we were thinking on our feet. I think to discharge our responsibility to the Council, we ought to try as best we can to make the applicant understand what he's asking to do, and then we can decide whether we agree with it. Then we can tell the Council yea or nay without saying we don't understand; that's your job.

CHAIR TALESFORE: Right, and I would agree with that. Commissioner Kane as been patiently waiting to speak.

COMMISSIONER KANE: I want an approval to continue past 11:00.

COMMISSIONER MICCICHE: Past 11:30, it is.

CHAIR TALESFORE: Oh, my gosh. Did you have a question or comment?

COMMISSIONER KANE: The issue for me is that given the dialogue between Mr. Hanson and Commissioner O'Donnell, this has not been thought out, and what I'm seeing having been there is we're going to extend the bar, and that's not okay.

If you look at the model of Los Gatos Café and Los Gatos Coffee Roasting, there's a system for buying the wine with the meal. You know, it's all regulated. But if you've got a happy hour crew, if they're buying a meal at the existing bar and they overflow to Viva a Go Go, they're not going to go in there for hamburgers; they're going to take the booze with them. So I'm not sure you can come up with an acceptable regulation that the crew is going to fall in behind. So you've got a good setup, you've got extended seating, you've got this, that, and the other thing. Leave the full booze out of Viva a Go Go and go with the wandering harp and the hours that you asked for. But I don't think the full service is going to make it to Viva a Go Go; I think they're just being nice.

CHAIR TALESFORE: Commissioner Micciche.

COMMISSIONER MICCICHE: As I understood what Mr. Bourgeois said, he said he was not going to support the motion because he didn't want full service liquor in Viva a Go Go; he wasn't leaving it up to anybody else, and I'm agreeing with that statement, if that's the statement he made. I think I just heard the same thing from Mr. Kane, and I'm feeling that way, that what we should do is recommend approval of the CUP, but without full liquor license in the Viva a Go Go portion.

CHAIR TALESFORE: And that might be good, because the one thing we did not discuss or address is the entertainment.

COMMISSIONER MICCICHE: No, I asked if there were any issues other than that and I didn't hear any.

CHAIR TALESFORE: Did you read the Staff Report on that? Because, "The Town's current alcohol policy requires its standards and a permit process be established for entertainment, and to date standards and a permit process have not been adopted, so therefore the proposed expansion of the approved occasional incidental entertainment, such as a piano or harp accompaniments to include jazz trios and other live music is not consistent with the alcohol policy."

I would suggest that we take a vote on this motion. I would support that it comes back to us so that I know what I didn't understand before I send it off.

ORRY KORB: And Madam Chair, for the record the date of continuance, if you choose to do that, would be March 28th.

CHAIR TALESFORE: Thank you. So I'm going to call the motion unless we have a question.

SALLY BAILY: Can you remind me what the motion is?

CHAIR TALESFORE: The motion is to remand the conditional use permit back to the applicant for further explanation of the alcohol use in the proposal, and including clarification of the entertainment.

ORRY KORB: And to continue the public hearing to March 28th.

CHAIR TALESFORE: Thank you, Mr. Korb. So I'm going to call the motion now. All those in favor, say aye. All those opposed? That was three yes and four opposed, so the motion dies.

In five minutes it's going to be 11:30. We now have to have a motion to extend the meeting.

COMMISSIONER MICCICHE: I make a motion to extend the meeting until 12:00 o'clock.

COMMISSIONER BOURGEOIS: Second.

CHAIR TALESFORE: I have a motion to extend the meeting to 12:00 o'clock and a second. All in favor say aye. Opposed? None. Okay, so the motion passes. We will continue this until 12:00 o'clock if we have to. Now we need to

finish this, and I'm looking for another motion. Commissioner Kane.

COMMISSIONER KANE: I voted no because I didn't want to unfairly make the applicant go back for a month and try to figure out something I didn't think he could figure out, but it is possible, but aside from that, because I don't think it's a good idea. I think it's unregulated expansion of the bar, but it's late and before I vote I want to know what I'm doing. Could Staff tell me about what we need to do under the entertainment section? I'm not getting it and it's late.

ORRY KORB: I'll take a stab at it. They currently have approval for some light entertainment; that is allowed even though the High Tech Burrito location did have a beer and wine license. If they wish to modify, as they have applied to do, their use permit to go to full alcohol, then they fall under the current alcohol policy that does say no entertainment until such time as the Town has adopted a general policy regarding entertainment accompanying alcohol use. So in effect, what it means is if the want to go to full alcohol, they can't get the entertainment they're asking for.

COMMISSIONER KANE: But if they stay with what they have, they can?

ORRY KORB: If they stay with their current license, then they're basically grandfathered in with the

entertainment that they currently have, so they're operating with beer and wine only. Let me just again remind the commissioners, you previously discussed a motion to recommend approval of all aspects of the use permit except the entertainment, the alcohol, and you can't approve the entertainment either, because again, that would be modifying the entertainment under the current alcohol policy, and because there is beer and wine there already, then that would mean that you can't approve it.

So again, if you want to send this on, your recommendation, it sounds like, based on what you've been discussing, would be to approve the CUP, except not to modify the entertainment and alcohol service.

COMMISSIONER MICCICHE: Alcohol at Viva a Go Go?

ORRY KORB: Right.

COMMISSIONER KANE: And the hours?

COMMISSIONER MICCICHE: The hours are okay.

ORRY KORB: That's your discussion.

CHAIR TALESFORE: I would like to discuss the hours right now. Commissioner Bourgeois.

COMMISSIONER BOURGEOIS: I'll go ahead and make that motion as stated by the Town Attorney.

COMMISSIONER MICCICHE: And I'll second that motion.

ORRY KORB: And I'll repeat it one more time. The motion is to recommend approval of the CUP with the

exception of the request to expand liquor service and expand the existing entertainment.

COMMISSIONER MICCICHE: No, you're allowing the alcohol.

CHAIR TALESFORE: Excuse me. Commissioner Micciche, would you like to comment on that?

COMMISSIONER MICCICHE: No, I'm seconding it.

CHAIR TALESFORE: All right, so you heard it. Any discussion? I do have an issue with the times, but it doesn't sound like I'm going to get any support on that, so it may be why I don't support this motion, because I don't think we've thoroughly thought that through or discussed it.

My issue is the 1:00 o'clock, and the fact that it sounds to me like that's really when you're in there for drinking. I can't think people are in there eating past 12:00 o'clock, but then hey, you know, I've been wrong before. I would think the hours could be at 12:00; I think that would be reasonable. Do we have another restaurant in town that's open until 1:00? This would be the first one? Commissioner Sayoc.

COMMISSIONER SAYOC: The question then is what is the latest a restaurant in town is open until?

CHAIR TALESFORE: Right. I mean I think this is going to set a precedent.

SANDY BAILY: I'm not certain, but I think there's like the Wine Cellar; I think that's open until 1:00. I'm not certain though.

CHAIR TALESFORE: Well if you're not certain, that's not answer for me, is it?

SANDY BAILY: Okay, but I think there are some restaurants.

CHAIR TALESFORE: I didn't know that there were.

SANDY BAILY: We could check that for you.

CHAIR TALESFORE: Well it's not about us being up late, but I don't know that there is a restaurant open until 1:00 o'clock.

COMMISSIONER BOURGEOIS: Do we know what the existing CUP says?

CHAIR TALESFORE: Well the existing is what it says in here. Joel, can you help us out with that?

JOEL PAULSON: 12:00am,Friday and Saturday.

CHAIR TALESFORE: Yeah, so would the maker of the motion please accept the existing hours as they stand? I don't see a compelling reason here.

COMMISSIONER RICE: You mean closing hours.

CHAIR TALESFORE: Closing hours.

ORRY KORB: If this is a critical question, then we can run back and pull the files on at the very least, the Wine Cellar, and see if we can determine their hours.

CHAIR TALESFORE: I don't think it's that critical, but thank you for offering to do that, Mr. Korb.

ORRY KORB: I'm not, Sandy is.

CHAIR TALESFORE: Oh, thank you, Ms. Baily. So maker of the motion, would that be acceptable to you?

COMMISSIONER BOURGEOIS: Yeah, I think that would be acceptable to me.

COMMISSIONER MICCICHE: Fine.

CHAIR TALESFORE: All right, fine. And the seconder was as well. Thank you, I see nods of head yes. Okay, then I'm going to call the question and not restate the motion. So with that being said, all in favor of the motion? That's seven. All against? None. Thank you. The motion passes.

ORRY KORB: This is a recommendation to the Town Council, which will hold a meeting, which will be scheduled by Staff, and notification will be sent out accordingly.

Date: February 22, 2007
For Agenda Of: February 28, 2007
Agenda Item: 4

REPORT TO: The Planning Commission

FROM: The Director of Community Development

LOCATION: 15960-15970 Los Gatos Boulevard
Architecture and Site Application S-07-009
Conditional Use Permit U-07-006

Requesting approval to modify an existing CUP for a restaurant (Viva Primavera) with alcohol service to expand the hours of operation, modify outdoor patio dining area, expand to an adjacent tenant space (formerly High Tech Burrito), expand to full liquor for Viva A Go-Go and allow service of alcohol in the outdoor seating area for Viva A Go-Go, and expand approved entertainment on property zoned C-1. APN 523-01-012 and 013.
PROPERTY OWNER: Colg, LP
APPLICANT: Viva Primavera, LLC

DEEMED COMPLETE: February 12, 2007
FINAL DATE TO TAKE ACTION: August 12, 2007

FINDINGS:

- As required by Section 29.20.190 of the Town Code for granting a Conditional Use Permit.
- As required by the Town's Alcohol Policy to serve alcoholic beverages past 10:00 P.M.
- It has been determined that this project is Categorically Exempt pursuant to Section 15301 of the State Environmental Guidelines as adopted by the Town.

CONSIDERATIONS:

- As required by Section 29.20.150 of the Town Code for Architecture and Site applications.

ACTION: The decision of the Planning Commission is final unless appealed within ten days.

EXHIBITS:

A. Required Findings (4 pages)
B. Resolution 2001-106 (6 pages)
C. Existing Conditions of Approval 15960 Los Gatos Boulevard (Formerly High Tech Burrito) (2 pages)
D. Existing Conditions of Approval 15970 Los Gatos Boulevard (Viva Primavera) (2 Pages)
E. Proposed Conditions of Approval (4 Pages)
F. Letter of Justification, received February 20, 2007 (3 pages)
G. Consulting Architect Comments
H. Development Plans (3 pages)

ATTACHMENT 4

RECOMMENDATION
SUMMARY: Forward a recommendation to the Town Council.

A. BACKGROUND:

1. *15960 Los Gatos Boulevard (High Tech Burrito)*
On May 5, 1997, the Town Council approved a Conditional Use Permit (CUP) for a high turn over sit down restaurant which allowed:

- A total of 16 seats, indoors and outdoors;
- Hours of operation from 10:00 AM to 10:00 PM;
- Outdoor seating; and
- Beer and wine service with meals, inside only.

2. *15970 Los Gatos Boulevard (Café Primavera)*
On January 26, 2000, CUP Application U-99-11 was approved by the Planning Commission to operate a restaurant (Café Primavera) with outdoor seating and full liquor service at 15970 Los Gatos Boulevard. The approval was for a quality restaurant which allowed:

- A total of 160 seats, indoors and outdoors;
- Hours of operation from 8:00 AM to 11:00 PM Monday through Thursday and 8:00 AM to 12:00 PM Friday through Sunday;
- Outdoor seating;
- Service of alcoholic beverages with meals;
- One private dining room for banquets and meetings; and
- Occasional, incidental, entertainment such as a piano or harp accompanist.

In 2006

B. REMARKS:

1. *Conditional Use Permit*
The applicant (Viva Primavera) is requesting approval to modify the existing CUPs for 15960 and 15970 Los Gatos Boulevard to permit the following:

- Create an opening in the interior wall between the two tenant spaces and operate the existing quality restaurant (Viva Primavera) in conjunction with an approved high turn over sit down restaurant (Viva A Go-Go, formerly High Tech Burrito);
- Maintain the 176 seats (total previously approved for both restaurants) which includes indoor and outdoor seating and banquet/meeting rooms;
- Extending the hours from 10:00 AM to 10:00 PM (Viva A Go-Go formerly High Tech Burrito) and 8:00 AM to 11:00 PM Monday through Thursday and 8:00 AM to 12:00 PM Friday through Sunday (Viva Primavera) to 6:30 AM to 11:00 PM Sunday through Thursday and 6:30 AM to 1:00 AM Friday, Saturday, holidays and evenings before holidays;

- Expand from one to two private dining rooms that can be used for banquets and meetings or general dining;
- Expand to full liquor for Viva A Go-Go and allow service of alcohol in the outdoor seating area for Viva A Go-Go; and
- Expanding approved occasional, incidental, entertainment such as a piano or harp accompanist to include Jazz trios and other live music.

Please see Exhibit F for further information regarding the applicant's justification for the proposed modifications.

Alcohol Service
The proposed hours of operation are 6:30 AM to 11:00 PM Sunday through Thursday and 6:30 AM to 1:00 AM Friday, Saturday, holidays and evenings before holidays. Additionally, the applicant is proposing to expand from beer and wine to full liquor for Viva A Go-Go and allow service of alcohol in the outdoor seating area for Viva A Go-Go; and

Staff has determined that these requests comply with the Town's Alcohol Policy (Exhibit B) if the Commission is able to make the following findings to allow alcohol service past 10 PM:

- Late night service will not adversely impact adjacent residential neighborhoods;
- The applicant does not have a history of complaints and non-compliance with local ordinances or the Alcoholic Beverage Policy; and
- The applicant has demonstrated a clear benefit to the community.

The Police Department has reviewed these proposals and has no concerns with the requests given that no separate bar will be permitted and based on the proposed Conditions of Approval.

Entertainment
The currently allowed entertainment for Viva Primavera was approved before the Town adopted the existing Alcohol Policy. Viva Primavera currently has Jazz trios and other live music performers at the restaurant on a regular basis. The Town's current Alcohol Policy requires that standards and a permit process be established for entertainment. To date, standards and a permit process have not been adopted. Therefore, the proposed expansion of the approved occasional, incidental, entertainment such as a piano or harp accompanist to include Jazz trios and other live music is not consistent with the Alcohol Policy.

2. *Architecture and Site*
The applicant (Viva Primavera) is requesting approval to expand and modify the existing outdoor dining area enclosure in the following manner:

- Modify and expand the existing railing and glass panels surrounding the existing outdoor dining area for Viva Primavera;
- Adding a metal gate with glass and glass panels between the columns at the existing restaurant entry closest to the parking lot; and

- Continuing the proposed railing, without the glass panels, to delineate the outdoor seating area for Viva A Go-Go.

The Consulting Architect has reviewed the applicant's proposal (Exhibit G). The Consulting Architect raised the following concerns with the proposed gate and glass infill panels at the restaurant entry given that this area is the focal point for the entire shopping center from Los Gatos Boulevard:

- Proposed gate and glass panels at the existing restaurant entry will diminish the depth of the building at the pedestrian level; and
- The infill glass panels between the columns adjacent to the entry will likely be awkward given the complexity of the opening.

Staff has discussed these concerns with the applicant. The applicant suggested a compromise which would move the proposed gate and glass panels at the existing entry approximately four feet back from the currently proposed position. Staff spoke with the Consulting Architect about their revised proposal and he recommended that they move the proposed gate and glass panels at the existing entry back approximately ten feet, to the columns closest to the existing restaurant entry doors. Staff supports the Consulting Architect's recommendation. The Commission should review this issue and the proposed options and make a recommendation on the appropriate solution.

C. RECOMMENDATION:

Pursuant to the Town's Alcohol Policy, these matters will be forwarded to the Town Council for final consideration. The Commission should carefully consider the following issues when formulating a recommendation to be forwarded to the Town Council:

- The proposed gate and glass panels at the entry. If so, where should those elements be located: at the existing entry, approximately four feet back from existing entry or approximately ten feet back from the existing entry?
- The proposed expansion of entertainment.
- Findings in the Town's Alcohol Policy to allow alcohol service past 10 PM.
- Expansion to full alcohol service for the high turn over sit down restaurant (Viva A Go-Go) in the indoor and outdoor seating areas.

If the Commission has concerns with the application(s), it should:

- Recommend approval of the application(s) with modified conditions, or
- Make the findings and recommend denial of the application(s).

Approved by:
Joel Paulson, Associate Planner

Bud N. Lortz,
Director of Community Development

BNL:RT:JP:
cc: COLG, LP, 1631 Willow Street #225, San Jose, CA 95125, Attn: Elizabeth Smith
Viva Primavera, LLC, 15970 Los Gatos Boulevard, Los Gatos, CA 95032, Attn: Michael Franges
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REQUIRED FINDINGS AND CONSIDERATIONS FOR

15960-15970 Los Gatos Boulevard
Architecture and Site Application S-07-009
Conditional Use Permit U-07-006

Requesting approval to modify an existing CUP for a restaurant with alcohol service to expand the hours of operation, modify outdoor patio dining area, expand to an adjacent tenant space, and expand approved entertainment on property zoned C-1. APN 523-01-012 and 013.
PROPERTY OWNER: Colg, LP
APPLICANT: Viva Primavera, LLC

FINDINGS

- As required by Section 29.20.190 of the Town Code for granting a Conditional Use Permit.

  The deciding body, on the basis of the evidence submitted at the hearing, may grant a conditional use permit when specifically authorized by the provisions of the Town Code if it finds that:

  (1) The proposed uses of the property are essential or desirable to the public convenience or welfare; and
  (2) The proposed uses will not impair the integrity and character of the zone; and
  (3) The proposed uses would not be detrimental to public health, safety or general welfare; and
  (4) The proposed uses of the property are in harmony with the various elements or objectives of the General Plan and the purposes of the Town Code.

- As required by the Town's Alcohol Policy, the deciding body shall make the following findings prior to approving an application for a Conditional Use Permit to serve alcoholic beverages past 10:00 PM:

  (1) Late night service will not adversely impact adjacent residential neighborhoods;
  (2) The applicant does not have a history of complaints and non-compliance with local ordinances or the Alcoholic Beverage Policy; and
  (3) The applicant has demonstrated a clear benefit to the community.

- As required by Section 15301 of the State Environmental Guidelines as adopted by the Town that this project is Categorically Exempt.

EXHIBIT A

CONSIDERATIONS

- As required by Section 29.20.150 of the Town Code for Architecture and Site applications:

  The deciding body shall consider all relevant matter including, but not limited to, the following:

  (1) *Considerations relating to traffic safety and traffic congestion.* The effect of the site development plan on traffic conditions on abutting streets; the layout of the site with respect to locations and dimensions of vehicular and pedestrian entrances, exits, drives, and walkways; the adequacy of off-street parking facilities to prevent traffic congestion; the location, arrangement, and dimension of truck loading and unloading facilities; the circulation pattern within the boundaries of the development, and the surfacing, lighting and handicapped accessibility of off-street parking facilities.

  A. Any project or development that will add traffic to roadways and critical intersections shall be analyzed, and a determination made on the following matters:

  1. The ability of critical roadways and major intersections to accommodate existing traffic;
  2. Increased traffic estimated for approved developments not yet occupied; and
  3. Regional traffic growth and traffic anticipated for the proposed project one (1) year after occupancy.

  B. The deciding body shall review the application for traffic roadway/intersection capacity and make one (1) of the following determinations:

  1. The project will not impact any roadways and/or intersections causing the roadways and/or intersections to exceed their available capacities.
  2. The project will impact a roadway(s) and/or intersection(s) causing the roadway(s) and/or intersection(s) to exceed their available capacities.

  Any project receiving Town determination subsection (1)b.1. may proceed. Any project receiving Town determination subsection (1)b.2. must be modified or denied if the deciding body determines that the impact is unacceptable. In determining the acceptability of a traffic impact, the deciding body shall consider if the project's benefits to the community override the traffic impacts as determined by specific sections from the general plan and any applicable specific plan.

  (2) *Considerations relating to outdoor advertising.* The number, location, color, size, height, lighting and landscaping of outdoor advertising signs and structures in

relation to the creation of traffic hazards and the appearance and harmony with adjacent development. Specialized lighting and sign systems may be used to distinguish special areas or neighborhoods such as the downtown area and Los Gatos Boulevard.

(3) *Considerations relating to landscaping.* The location, height, and materials of walls, fences, hedges and screen plantings to insure harmony with adjacent development or to conceal storage areas, utility installations, parking lots or unsightly development; the planting of ground cover or other surfacing to prevent dust and erosion; and the unnecessary destruction of existing healthy trees. Emphasize the use of planter boxes with seasonal flowers to add color and atmosphere to the central business district. Trees and plants shall be approved by the Director of Parks, Forestry and Maintenance Services for the purpose of meeting special criteria, including climatic conditions, maintenance, year-round versus seasonal color change (blossom, summer foliage, autumn color), special branching effects and other considerations.

(4) *Considerations relating to site layout.* The orientation and location of buildings and open spaces in relation to the physical characteristics of the site and the character of the neighborhood; and the appearance and harmony of the buildings with adjacent development.

Buildings should strengthen the form and image of the neighborhood (e.g. downtown, Los Gatos Boulevard, etc.). Buildings should maximize preservation of solar access. In the downtown, mid-block pedestrian arcades linking Santa Cruz Avenue with existing and new parking facilities shall be encouraged, and shall include such crime prevention elements as good sight lines and lighting systems.

(5) *Considerations relating to drainage.* The effect of the site development plan on the adequacy of storm and surface water drainage.

(6) *Considerations relating to the exterior architectural design of buildings and structures.* The effect of the height, width, shape and exterior construction and design of buildings and structures as such factors relate to the existing and future character of the neighborhood
and purposes of the zone in which they are situated, and the purposes of architecture and site approval. Consistency and compatibility shall be encouraged in scale, massing, materials, color, texture, reflectivity, openings and other details.

(7) *Considerations relating to lighting and street furniture.* Streets, walkways, and building lighting should be designed so as to strengthen and reinforce the image of the Town. Street furniture and equipment, such as lamp standards, traffic signals, fire hydrants, street signs, telephones, mail boxes, refuse receptacles, bus shelters, drinking fountains, planters, kiosks, flag poles and other elements of the street environment should be designated and selected so as to strengthen and reinforce the Town image.

(8) *Considerations relating to access for physically disabled persons.* The adequacy of the site development plan for providing accessibility and adaptability for physically disabled persons. Any improvements to a nonresidential building where the total valuation of alterations, structural repairs or additions exceeds a threshold value established by resolution of the Town Council, shall require the building to be modified to meet the accessibility requirements of title 24 of the California

Administrative Code adaptability and accessibility. In addition to retail, personal services and health care services are not allowable uses on nonaccessible floors in new nonresidential buildings. Any change of use to retail, health care, or personal service on a nonaccessible floor in a nonresidential building shall require that floor to be accessible to physically disabled persons pursuant to the accessibility requirements of title 24 of the California Administrative Code and shall not qualify the building for unreasonable hardship exemption from meeting any of those requirements. This provision does not effect lawful uses in existence prior to the enactment of this chapter. All new residential developments shall comply with the Town's adaptability and accessibility requirements for physically disabled persons established by resolution.

(9) *Considerations relating to the location of a hazardous waste management facility.* A hazardous waste facility shall not be located closer than five hundred (500) feet to any residentially zoned or used property or any property then being used as a public or private school primarily educating persons under the age of eighteen (18). An application for such a facility will require an environmental impact report, which may be focused through the initial study process.

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RESOLUTION 2001 - 106

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS AMENDING THE TOWN'S ALCOHOLIC BEVERAGE POLICY

WHEREAS, the sale of alcoholic beverages, if not regulated, can jeopardize public safety, result in an increase of calls for police services and compromise the quality of life for Town residents; and

WHEREAS, The Town Council wants to balance the regulation of alcoholic beverage service and protection of residential neighborhoods with the goal of maintaining a vibrant and successful Downtown and commercial areas throughout Los Gatos; and

WHEREAS, the Town Council held a study session on July 2, 2001 to discuss issues relating to service of alcoholic beverages; and

WHEREAS, the Town Council has indicated a desire to review all applications for new alcohol service or change in existing service, and a need to amend the existing Alcohol Policy,

THEREFORE BE IT RESOLVED: the Town Council of the TOWN OF LOS GATOS does hereby adopt the amended Alcoholic Beverage Policy attached hereto as Exhibit A.

EXHIBIT B

PASSED AND ADOPTED at a regular meeting of the Town Council held on the 17th day of September, 2001, by the following vote:

COUNCIL MEMBERS:

AYES: Randy Attaway, Steven Blanton, Sandy Decker, Steve Glickman, Mayor Joe Pirzynski.

NAYS: None

ABSENT: None

ABSTAIN: None

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:

CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

POLICY REGULATING THE CONSUMPTION AND SERVICE OF ALCOHOLIC BEVERAGES

I. Purpose

The consumption or service of alcoholic beverages, if not regulated, can jeopardize public safety; result in an increase of calls for police services and compromise the quality of life for Town residents. This policy provides parameters for alcoholic beverage service, particularly addressing late night service when alcohol related incidents are most likely to occur and when the disturbances to Town residents is least tolerable.

The service of alcoholic beverages, with or without meals, past 10 PM is a discretionary privilege to be determined on a case by case basis. The following provisions are intended to balance the protection of residential neighborhoods in close proximity to commercial districts and still maintain the viability of our commercial centers in which restaurants have an essential role. Hours of operation may be regulated based on an establishment's proximity to residential neighborhoods or schools, the concentration of establishments in an area serving alcoholic beverages or for other reasons that may arise at the public hearing.

The deciding body may approve a conditional use permit to serve alcoholic beverages based on the merits of the application and subject to the following requirements:

II. General policy

1. The Town shall continue to **strongly** discourage new applications for stand alone bars or restaurants with separate bars.

2. The Town shall continue to discourage applications for entertainment establishments serving alcoholic beverages.

3. Entertainment in association with an eating or drinking establishment may be allowed if standards and a permit process are adopted.

4. Alcoholic beverage service for new conditional use permit applications or applications for modification of a conditional use permit shall not be allowed:

   A. After 11 PM Sunday through Thursday, except for holidays and evenings before holidays.

   B. After 1 AM Friday, Saturday, holidays or evenings before holidays.

An existing establishment with a conditional use permit in good standing allowed to serve alcoholic beverages past the hours stated above may continue to operate under their existing hours of operation.

5. Any establishment serving alcoholic beverages shall be subject to the following:

   A. Uniformed privately provided security guards may be required in or around the premises by the Chief of Police if alcohol related problems recur that are not resolved by the licensed owner.

   B. At the discretion of the Chief of Police, periodic meetings will be conducted with representatives from the Police Department for on-going employee training on alcoholic beverage service to the general public.

   C. All establishments shall use an employee training manual that addresses alcoholic beverage service consistent with the standards of the Californian restaurant Association.

   D. All licensed operators shall have and shall actively promote a designated driver program such as complimentary non-alcoholic beverages for designated drivers.

   E. Taxicab telephone numbers shall be posted in a visible location.

6. The deciding body shall make the following findings prior to approving an application for conditional use permit to serve alcoholic beverages past 10PM:

   A. Late night service will not adversely impact adjacent residential neighborhoods.

   B. The applicant does not have a history of complaints and non-compliance with local ordinances or the Alcoholic Beverage Policy.

   C. The applicant has demonstrated a clear benefit to the community.

7. A meal is defined as a combination of food items selected from a menu (breakfast, lunch or dinner). Appetizers such as popcorn, nachos, pretzels, potato skins, relish trays, etc. (hot or cold) are not meals.

8. Alcoholic beverage service in approved outdoor seating areas may be permitted if adequate separation from public areas is provided as determined by the Town Manager. The separation shall clearly suggest that alcohol is not allowed outside the restaurant seating area.

III. Specific Policy

1. Restaurants:

   Alcoholic beverages may only be served with meals.

2. Restaurants With Separate Bars:

   Alcoholic beverage service is permitted in the dining area only in conjunction with meal service. Meal service shall be available until closing or 11 PM Sunday through Thursday and until 12 midnight Friday, Saturday, holidays and evenings before holidays, whichever is earlier, if late night bar service is available. Specific hours of operation for each establishment are determined upon issuance of a conditional use permit.

IV. Review Process

1. Proposals for new bars or restaurants with bars and all requests for new alcohol service or a change to existing service shall be reviewed by the Planning Commission. The Commission will make a recommendation to the Town Council and the Council shall have final review authority.

2. Changes in ownership for businesses involving service of alcoholic beverages shall be reviewed by the Community Development Department. The following process will be followed:

   a. The Director of Community Development shall contact the new business owner to make them aware of the conditions of approval attached to the Use Permit for the location.

   b. One year following issuance of a business license, surrounding/impacted property owners shall be notified and any comments regarding the operation of the business shall be solicited.

   c. If the Director of Community Development becomes aware of any alcohol related impacts on the surrounding neighborhood, the Director shall review the operation of the business to determine whether there is a violation of the use permit.

d. If there are violations of the use permit that have not been voluntarily corrected by the business owner the matter will be forwarded to the Planning Commission for public hearing pursuant to Section 29.20.310 of the Zoning Ordinance.

e. Pursuant to Section 29.20.315 of the Zoning Ordinance the Planning Commission may revoke or modify the conditional use permit if it finds that sufficient grounds exist.

IV. Enforcement

All conditional use permits issued to establishments for alcoholic beverage service on-site shall be subject to Section 29.30.310(b) of the Town Code authorizing the Town Manager to take enforcement action if it is determined that the sale of alcohol has become a nuisance to the Town's public health, safety or welfare. Enforcement of section 29.20.310(b) of the Town Code will be based on, but not limited to, the following factors:

I. The number and types of calls for service at or near the establishment ~~which~~ that are a direct result of patrons actions;

II. The number of complaints received from residents ad other citizens concerning the operation of an establishment;

III. The number of arrests for alcohol, drug, disturbing the peace, fighting and public nuisance violations associated with an establishment;

IV. The number and kinds of complaints received from the State Alcoholic Beverage Control office and the County Health Department;

V. Violation of conditions of approval related to alcoholic beverage service.

The Alcoholic Beverage Policy is not to be construed to be a right of development. The Town retains the right of review and approval (or denial) of each project based on its merits.

CONDITIONS OF APPROVAL FOR:

<u>15960 Los Gatos Boulevard</u>
Project Application PRJ-97-003
Requesting approval of a Conditional Use Permit for a restaurant with indoor beer and wine service served with meals, and outdoor seating on property zoned C-1.
PROPERTY OWNER: Carl Cilker
APPLICANT: High Tech Burrito Corporation

TO THE SATISFACTION OF THE PLANNING DIRECTOR:

1. EXPIRATION OF APPROVAL. This approval will expire two years from the date of this approval (May 19, 1999) unless the approval is used before expiration. Section 29.20.335 defines what constitutes the use of an approval granted under the Zoning Ordinance.
2. CONDITIONS OF APPROVAL. A copy of the Conditions of Approval letter for this project shall be blue printed on the coversheet of the plans submitted for Building Department approvals.
3. MAXIMUM SEATING. The maximum number of seats for the restaurant and outdoor seating area shall not exceed a combined total of 16 seats.
4. OUTDOOR SEATING AREA. Beer and wine service shall be prohibited in the outdoor seating area. The outdoor seating area shall clearly be delineated by means of physical markers or barriers at least three feet in height. Acceptable methods for delineating an outdoor seating area include: barriers, landscaping, movable partitions or planters with living plant materials.
5. UMBRELLA SIGNS. No sign copy or logos are permitted on umbrellas for the outdoor seating area.
6. HOURS OF OPERATION. The hours of operation for the restaurant shall be limited to 10:00 a.m. to 10:00 p.m. daily.
7. TRASH. The manager/tenant of the restaurant space shall monitor daily the area in front of and adjacent to the restaurant and keep it clear of trash.
8. RECYCLED CONTAINERS. Any take-out food shall be served in recyclable containers.
9. REUSABLE UTENSILS. All meals served on-site shall be on re-usable utensils.
10. VENTILATION. Ventilation equipment shall be maintained to a level of operation so that odors are not disturbing to neighbors.
11. ROOF TOP SCREENING. All roof top mechanical equipment required for the restaurant use shall be screened from view.
12. SIGNS. All signs for the restaurant use shall be consistent with the sign program established for this shopping center and shall comply with the Town's Sign Ordinance.

TO THE SATISFACTION OF THE CHIEF OF POLICE:

13. UNIFORMED SECURITY. Uniformed security guards shall be provided by the restaurant operator for security in and around the premises as may be required by the Chief of Police if alcohol related problems occur.
14. CONSULTATION AND TRAINING. At the discretion of the Chief of Police, periodic meetings will be conducted with representatives from the Police Department for on-going employee training on alcoholic beverage service to the general public.
15. TRAINING MANUAL. The restaurant operator shall use an employee training manual that addresses alcoholic beverage service consistent with the standards of the California Restaurant Association.
16. DESIGNATED DRIVER PROGRAM. The restaurant operator shall actively promote a designated driver program such as complimentary non-alcoholic beverages for designated drivers.
17. POSTING OF TAXICAB TELEPHONE NUMBERS. The restaurant operator shall post in a visible location the telephone numbers of local taxicab companies and operators.

EXHIBIT C

CONDITIONS OF APPROVAL
15960 Los Gatos Boulevard, PRJ-97-003

TO THE SATISFACTION OF THE DIRECTOR OF BUILDING & ENGINEERING SERVICES:

18. PERMITS REQUIRED: A building permit application shall be required for each proposed structure. Separate Electrical/Mechanical/Plumbing permit shall be required as necessary.
19. CONSTRUCTION PLANS: The Conditions of Approval shall be stated in full on the cover sheet of construction plan submitted for building permit.
20. SIZE OF PLANS: The maximum size of construction plans submitted for building permits shall be 24 in. X 36 in.
21. TITLE 24 ENERGY COMPLIANCE: California Title 24 Energy Compliance forms shall be blue lined on the construction plans.
22. PLANS: The construction plans for this project shall be prepared under direct supervision of a licensed architect or engineer. (Business and Professionals Code Section 5538)
23. TITLE 24 ACCESSIBILITY - COMMERCIAL: On site parking facility shall comply with the latest California Title 24 Accessibility Standards for disabled.
24. TITLE 24 ACCESSIBILITY - COMMERCIAL: On site general path of travel shall comply with the latest California Title 24 Accessibility Standards. Work shall include but not be limited to accessibility to building entrances from parking facilities and sidewalks.
25. TITLE 24 ACCESSIBILITY - COMMERCIAL: The building shall be upgraded to comply with the latest California Title 24 Accessibility Standards for disabled. Necessary work shall be first investigated by the design architect then confirmed by the Town staff.
26. COMMERCIAL - RESTAURANT USE: Proper size grease trap shall be required for any restaurant use. The following agencies will review the grease trap requirements before issuance of the building permit:
    a) West Valley Sanitation District: 378-2408
    b) County Health Department: 299-6060
27. SPECIAL INSPECTIONS: When a special inspection is required by UBC Section 1701, the architect or engineer of record shall prepare an inspection program that shall be submitted to the Building Official for approval prior to issuance of the Building Permit, in accordance with UBC Section 106.3.5. Please obtain Town Special Inspection form from the Building Department Service Counter. The Town Special inspection schedule shall be blue lined on the construction plan.
28. NON-POINT SOURCE POLLUTION STANDARDS: The Town standard Santa Clara Valley Non-point Source Pollution Control Program specification sheet shall be part of plan submittal. The specification sheet (Size 24" X 36") is available at the Building Department service counter.
29. APPROVALS REQUIRED: The Project requires the following agencies approval before issuing a building permit:
    a) West Valley Sanitation District: 378-2408
    b) Central Fire District: 378-4015
    c) County Health Department: 299-6060

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PLANNING COMMISSION MEETING OF JANUARY 26, 2000

CONDITIONS OF APPROVAL FOR:

15970 Los Gatos Boulevard
Conditional Use Permit U-99-11

Requesting approval of a Conditional Use Permit to operate a restaurant (Café Primavera) with outside seating and to serve alcohol with meals on property zoned C-1.
PROPERTY OWNER: Carl Cilker
APPLICANT: Wayne Renshaw, Architect

TO THE SATISFACTION OF THE PLANNING DIRECTOR:

(Planning Section)

1. EXPIRATION OF APPROVAL. The Conditional Use Permit approval for the building will expire two years from the date of approval unless the approval is used before expiration (January 26, 2002). Section 29.20.335 defines what constitutes the use of an approval granted under the Zoning Ordinance.
2. RESTAURANT: The type of restaurant service shall be fine dining and designated as "Quality" as defined in Town Code, Section 29.10.020.
3. LAPSE FOR DISCONTINUANCE. If the activity for which the Conditional Use Permit has been granted is discontinued for a period of one (1) year the approval lapses.
4. COVER SHEET NOTES. The conditions of approval shall be printed on the cover sheet of the final plans submitted for building permit approval.

(Building Section)

TO THE SATISFACTION OF THE DIRECTOR OF BUILDING & ENGINEERING SERVICES:

4. PERMITS REQUIRED: A building permit application shall be required for the proposed structure. Separate electrical/mechanical/plumbing permits shall be required as necessary.
5. CONSTRUCTION PLANS: The Conditions of Approval shall be stated in full on the cover sheet of construction plan submitted for building permit.
6. SIZE OF PLANS: The maximum size of construction plans submitted for building permits shall be 24 in. X 36 in.
7. TITLE 24 ACCESSIBILITY - COMMERCIAL: On site parking facility shall comply with the latest California Title 24 Accessibility Standards for disabled.
8. TITLE 24 ACCESSIBILITY - COMMERCIAL: On site general path of travel shall comply with the latest California Title 24 Accessibility Standards. Work shall include but not be limited to accessibility to building entrances from parking facilities and sidewalks.
9. TITLE 24 ACCESSIBILITY - COMMERCIAL: The building shall be upgraded to comply with the latest California Title 24 Accessibility Standards. Necessary work shall be first investigated by the design architect then confirmed by the Town staff.
10. COMMERCIAL - RESTAURANT USE: Proper size grease trap shall be required for any restaurant use. The following agencies will review the grease trap requirements before the issuance of the building permit:
    a) West Valley Sanitation District: 378-2407
    b) County Health Department: 299-6060
11. NONPOINT SOURCE POLLUTION STANDARDS: The Town standard Santa Clara Valley Nonpoint Source Pollution Control Program specification sheet shall be part of plan submittal. The specification sheet (size 24" x 36") is **available** at the Building Department service counter.

EXHIBIT D

12. APPROVALS REQUIRED: The project requires the following agencies approval before issuing a building permit:
    a. West Valley Sanitation District: 378-2407
    b. Santa Clara County Fire Department: 378-4010
    c. County Health Department: 299-6060

(Police Department Section)

TO THE SATISFACTION OF THE CHIEF OF POLICE:

13. ALCOHOLIC BEVERAGES: Alcoholic beverages may be served only with meals in the restaurant. No alcoholic beverages may leave the premises. A meal should be defined as a combination of food items selected from a menu which would constitute a normally accepted meal (breakfast, lunch, dinner, or brunch).
14. ALCOHOLIC BEVERAGE SERVICE: Alcoholic beverages may be served with meals in the outside patio area as long as there is a barrier or fencing, 3 feet in height surrounding the patio area and separating it from the sidewalk. The barrier or fencing may be a combination of fencing and shrubbery to equal 3 feet. Also, there will be no access to the restaurant from the street directly to the patio area unless a hostess is stationed at the patio entrance at all times.

(Fire Department Section)

TO THE SATISFACTION OF THE SANTA CLARA COUNTY FIRE DEPARTMENT:

15. BUILDING CODE STANDARDS: At time of building permit, the applicant shall show compliance with the 1998 California Building Code relative to existing from all portions of the building.

16. FIRE PROTECTION STANDARDS: The existing fire protection system shall be modified as necessary to accommodate the new building design (if appropriate). A State of California licensed fire protection contractor shall submit plans to this department for review and approval prior to beginning their work.

CONDITIONS OF APPROVAL FOR:

<u>15960-15970 Los Gatos Boulevard</u>
Architecture and Site Application S-07-009
Conditional Use Permit U-07-006

Requesting approval to modify an existing CUP for a restaurant (Viva Primavera) with alcohol service to expand the hours of operation, modify outdoor patio dining area, expand to an adjacent tenant space (formerly High Tech Burrito), and expand approved entertainment on property zoned C-1. APN 523-01-012 and 013.
PROPERTY OWNER: Colg, LP
APPLICANT: Viva Primavera, LLC

TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:
(Planning Division)

1. APPROVAL: This application shall be completed in accordance with all of the conditions of approval listed below and in compliance with the letter of justification (Exhibit F) and plans (Exhibit H) approved in the report to the Planning Commission, unless modified by conditions contained herein. Any changes or modifications made to the approved plans shall be approved by the Director of Community Development or the Planning Commission, depending on the scope of the changes.
2. LAPSE FOR DISCONTINUANCE: If the activity for which the Conditional Use Permit has been granted is discontinued for a period of one (1) year the approval lapses.
3. USE: The approved use is for a quality restaurant in conjunction with a high turn over sit down restaurant.
4. NUMBER OF SEATS: The maximum number of seats for the restaurants shall not exceed 176 (total includes indoor, outdoor, and banquet/meeting rooms).
5. OUTDOOR SEATING: A physical delineation shall be installed for the outdoor seating to the satisfaction of the Director of Community Development, Chief of Police, and Director of Parks and Public Works.
6. OUTDOOR FURNITURE: Outdoor furniture shall be of high quality in terms of materials and appearance (plastic furniture is not permitted).
7. HOURS OF OPERATION: Maximum hours of operation for the restaurant shall be 6:30 AM to 11:00 PM Sunday through Thursday and 6:30 AM to 1:00 AM Friday, Saturday, holidays and evenings before holidays.
8. ALCOHOL SERVICE: The service of alcohol for the restaurants is permitted only with meals. A meal is defined as a combination of food items selected from a menu (breakfast, brunch, lunch, or dinner). Appetizers such as popcorn, nachos, pretzels, potato skins, relish trays, etc. (hot or cold) are not meals. There shall be no separate bar for the restaurant.
9. LIVE ENTERTAINMENT: Occasional, incidental, indoor entertainment such as piano or harp accompanist is permitted at the quality restaurant location only.
10. NOISE: Amplified entertainment noise levels shall comply with the provisions of the Noise Ordinance as set forth in Section 16.20.040 of the Town Code.

TO THE SATISFACTION OF THE CHIEF OF POLICE:

11. UNIFORMED SECURITY: Uniformed privately provided security guards may be required in or around the premises by the Chief of Police if alcohol related problems recur that are not resolved

by the licensed owner.

12. CONSULTATION AND TRAINING: At the discretion of the Chief of Police, periodic meetings will be conducted with representatives from the Police Department for on-going employee training on alcoholic beverage service to the general public.
13. TRAINING MANUAL: The restaurant operator shall use an employee training manual that addresses alcoholic beverage service consistent with the standards of the California Restaurant Association.
14. DESIGNATED DRIVER PROGRAM: The restaurant operator shall actively promote a designated driver program such as complimentary non-alcoholic beverages for designated drivers.
15. POSTING OF TAXICAB TELEPHONE NUMBERS: Taxicab telephone numbers shall be posted in a visible location.

TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT:
(Building Division)

16. PERMITS REQUIRED: A building permit shall be required for the restaurant expansion and alterations to the existing patio area. Separate permits are required for electrical, mechanical, and plumbing work as necessary.
17. CONDITIONS OF APPROVAL: The Conditions of Approval must be blue-lined in full on the cover sheet of the construction plans. A compliance memorandum shall be prepared and submitted with the building permit application detailing how the Conditions of Approval will be addressed.
18. SIZE OF PLANS: Four sets of construction plans, maximum size 24" x 36."
19. TITLE 24 - COMMERCIAL: For any proposed tenant improvements, on-site general path of travel shall comply with the latest California Title 24 Accessibility Standards. Work shall include, but not be limited to, accessibility to building entrances from parking facilities and sidewalks.
20. NONPOINT SOURCE POLLUTION STANDARDS: The Town standard Santa Clara Valley Nonpoint Source Pollution Control Program shall be part of the plan submittal as the second page. The specification sheet is available at the Building Division Service Counter for a fee of $2 or at San Jose Blue Print.
21. PLANS: The construction plans shall be prepared under the direct supervision of a licensed architect or engineer. (Business and Professionals Code Section 5538)
22. APPROVALS REQUIRED: The project requires the following departments and agencies approval before issuing a building permit:
    a. Community Development - Planning Division: Joel Paulson at 354-6879
    b. Santa Clara County Fire Department: (408) 378-4010
    c. West Valley Sanitation District: (408) 378-2407
    d. Environmental Health Department: (408) 918-3400

TO THE SATISFACTION OF THE DIRECTOR OF PARKS AND PUBLIC WORKS:
(Engineering Division)

23. GENERAL. All public improvements shall be made according to the latest adopted Town Standard Drawings and the Town Standard Specifications. All work shall conform to the applicable Town ordinances. The adjacent public right-of-way shall be kept clear

of all job related dirt and debris at the end of the day. Dirt and debris shall not be washed into storm drainage facilities. The storing of goods and materials on the sidewalk and/or the street will not be allowed unless a special permit is issued. The developer's representative in charge shall be at the job site during all working hours. Failure to maintain the public right-of-way according to this condition may result in the Town performing the required maintenance at the developer's expense.

24. ENCROACHMENT PERMIT. All work in the public right-of-way will require a Construction Encroachment Permit. All work over $5,000 will require construction security.
25. PUBLIC WORKS INSPECTIONS. The developer or his representative shall notify the Engineering Inspector at least twenty-four (24) hours before starting any work pertaining to on-site drainage facilities, grading or paving, and all work in the Town's right-of-way. Failure to do so will result in rejection of work that went on without inspection.
26. SILT AND MUD IN PUBLIC RIGHT-OF-WAY. It is the responsibility of contractor and home owner to make sure that all dirt tracked into the public right-of-way is cleaned up on a daily basis. Mud, silt, concrete and other construction debris SHALL NOT be washed into the Town's storm drains.
27. RESTORATION OF PUBLIC IMPROVEMENTS. The developer shall repair or replace all existing improvements not designated for removal that are damaged or removed because of developer's operations. Improvements such as, but not limited to: curbs, gutters, sidewalks, driveways, signs, pavements, raised pavement markers, thermoplastic pavement markings, etc. shall be repaired and replaced to a condition equal to or better than the original condition. Existing improvement to be repaired or replaced shall be at the direction of the Engineering Construction Inspector, and shall comply with all Title 24. Disabled Access provisions. Developer shall request a walk-through with the Engineering Construction Inspector before the start of construction to verify existing conditions.
28. SANITARY SEWER LATERAL. Sanitary sewer laterals are televised by West Valley Sanitation District and approved by the Town of Los Gatos before they are used or reused. Install a sanitary sewer lateral clean-out at the property line.
29. SANITARY SEWER BACKWATER VALVE. Drainage piping serving fixtures which have flood level rims less than twelve (12) inches (304.8 mm) above the elevation of the next upstream manhole and/or flushing inlet cover at the public or private sewer system serving such drainage piping shall be protected from backflow of sewage by installing an approved type backwater valve. Fixtures above such elevation shall not discharge through the backwater valve, unless first approved by the Administrative (Sec. 6.50.025). The Town shall not incur any liability or responsibility for damage resulting from a sewer overflow where the property owner or other person has failed to install a backwater valve, as defined section 103(e) of the Uniform Plumbing Code adopted by section 6.50.010 of the Town Code and maintain such device in a functional operating condition. Evidence of West Valley Sanitation District's decision on whether a backwater device is needed shall be provided prior to issuance of a building permit.
30. OUTDOOR TRASH ENCLOSURES. Outdoor trash enclosures shall be covered and area drains connected to the sanitary sewer system shall be provided.
31. GREASE TRAPS. Meet all requirement of the Santa Clara County Health Department

and West Valley Sanitation District for the interception, separation or pretreatment of effluent.

32. CONSTRUCTION NOISE. Between the hours of 8:00 a.m. to 8:00 p.m., weekdays and 9:00 a.m. to 7:00 p.m. weekends and holidays, construction, alteration or repair activities shall be allowed. No individual piece of equipment shall produce a noise level exceeding eighty-five (85) dBA at twenty-five (25) feet. If the device is located within a structure on the property, the measurement shall be made at distances as close to twenty-five (25) feet from the device as possible. The noise level at any point outside of the property plane shall not exceed eighty-five (85) dBA.

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Viva Primavera, LLC

15970 Los Gatos Blvd.
Los Gatos, California 95032
Phone: (408) 395-6763
Fax: (408) 668-1300

February 20, 2007

Los Gatos Planning Department
110 E. Main Street
Los Gatos, CA 95030

Re: Letter of Justification for Viva Primavera; 15970 Los Gatos Blvd.

Viva Primavera ("Viva"), a family oriented neighborhood restaurant, is located in the Cornerstone Shopping Center on the corner of Los Gatos Blvd. and Blossom Hill Rd. The current ownership group has been operating the restaurant since November 2003. Since the reopening in 2003, the restaurant has been well received by the surrounding residential and commercial communities. Not only is Viva a great place to dine with family and friends, Viva offers two private banquet rooms, complete with audio/visual equipment, that are great for family gatherings, business meetings and many other conceivable group functions, such as wedding rehearsal dinners and non-profit fund raising events. In addition to the foregoing, Viva has been proactive in giving back to the community. Please see the attachment listing several organizations in which Viva has been involved through donations of time and/or money.

As a member of the Los Gatos Chamber of Commerce, Viva would like to further enhance the value it brings to the community and is seeking approval from the Town of Los Gatos for the following:

1. Expand the hours of operation, thereby, enabling Viva to serve breakfast and high end coffees beginning at 6:30 am 7-days a week and remain open until 11:00 pm Sunday-Thursday and until 1:00 am Friday, Saturday, holidays and evenings before holidays;
2. Approve the revisions to the outdoor garden patio dining area;
3. Permit the expansion of Viva into the adjacent space within the Cornerstone Shopping Center. (The space is currently occupied by High Tech Burrito); and
4. Authorize the inclusion of Jazz Trios and other live music as incidental entertainment as such is described in the original letter of justification.

Viva began serving breakfast in November 2005 and began serving high end coffees in February 2006. Our decision to open early followed a thorough analysis of our customer's wants and desires. Several months following our decision to fulfill the demands of our customers, we were informed that our current conditional use permit did not allow us to offer this service to the community.

RECEIVED
FEB 20 2007
TOWN OF LOS GATOS
BUILDING DIVISION

EXHIBIT F

Our request to remain open until 11:00 pm Sunday-Thursday and until 1:00 am Friday, Saturday, holidays and evenings before holidays is again based upon the desires of our customers and complies with the Town's alcohol policy.

Dining in Viva's garden patio is a customer favorite. Due to climate and sun conditions, there are times that the Viva patio dining experience is not so pleasurable. On hot days our customers want fans, on cold days our customers want heaters, on windy days our customers want wind screens and on early sunny evenings our customers want sun shades. In maintaining with the standards of the Town of Los Gatos, except for the recommended height of patio barriers, Viva is submitting for approval, the included patio improvement design. Approval of the design would not only add to the aesthetics of the beautiful Cornerstone Shopping Center, but also improve the experience of dining outdoors in Viva's garden patio.

Due to the fact that Viva has been well received within the community, Viva would like to acquire the space currently occupied by High Tech Burrito. We intend to offer a limited menu of high end food for take-out or for counter service dining. Construction related to our plan of expansion will be limited to painting the interior, installing new flooring and creating an access point through the non weight bearing divider between the two spaces. This plan will reduce the noise, waste and inconvenience associated with a major renovation.

Viva's primary focus is to provide great food and great service to ensure our customers have a pleasurable and memorable dining experience. We felt this experience could be further enhanced by the inclusion of incidental entertainment. As such, we decided to include live jazz on Friday and Saturday evenings. Our customers love dining while being entertained by jazz trios playing in the background. The trios occupy an area equivalent to the size of one dining table and typically set up near the front of the restaurant next to the bar. The musicians provide their own equipment including speakers, amplifiers and microphones. The volume is maintained at mild levels to ensure the Jazz is incidental and supplemental to the dining experience. We have also experimented with other types of entertainment such as a solo pianist. All of the live entertainment has been well received by our customers, and on nights when there was no entertainment, our customers complained. Approval of our request to provide live entertainment on Friday, Saturday and occasionally on selected weekday evenings will enable us to continue to provide the dining experience our customers have grown to love.

For the reasons stated above, we feel that our requests will allow Viva to cater to the needs of more Los Gatos residents while continuing to offer a necessary compliment to the community.

Respectfully Submitted,

Michael Franges
Owner

Donations & Involvement In Community Events

Blossom Hill School Pumpkin Festival
Fisher Junior High School Pumpkin Palooza Fund Raiser
Shir Hadash Simcha Celebration
Assistance League of Los Gatos Fund Raiser
Holiday Shopping Card for Breast Cancer
''Hooray for Hollywood'' Los Gatos High School
O'Connor Hospital Foundation
Lexington Elementary School ''Tropical Paradise'' Fundraiser
Triton Museum of Art '' Ruby Anniversary Gala''
Los Gatos Parent Nursery School Fantasy Faire
Lakeside School Community Foundation Auction
VIP League Addiction Prevention Programs
Notre Dame High School Spring Gala
George Mark Children's House
Leigh High School All-Sports Booster Club
Los Gatos Education Foundation
- Participation in The Buzz Book
- Guest Bartenders Fund Raiser

Los Gatos Catillion Fund Raiser
Annual Los Gatos Food Fest ''A Place For Teens''
Los Gatos Lions Club Golf Tournament
George Mark Children's Golf Tournament
Foundation For Hope & Hope Services Golf Tournament
Play for a Cure Foundation Tennis Tournament
Alta Vista School Home & School Club '' Guest Bartenders''
Van Meder School Home & School Club

CDG
CANNON
DESIGN
GROUP

ARCHITECTURE PLANNING URBAN DESIGN

December 18, 2006

Mr. Joel Paulson
Community Development Department
Town of Los Gatos
110 E. Main Street
P.O. Box 949
Los Gatos, CA 95031

RE: 15960-15970 Los Gatos Blvd. - Viva Restaurant

Dear Joel:

I reviewed the drawings, and visited the site. My comments and recommendations are as follows:

Neighborhood Context

The restaurant is currently located in the Cornerstone Shopping Center which is well designed with strong visual elements and detailing. The proposed work, as it relates to the exterior of the complex, largely consists of minor changes to the fence surrounding the outdoor dining area, and the addition of a metal gate and glass infill panels between columns at the entry. Photographs of the existing exterior conditions are shown below.

Exisitng glass and metal fence to the left of the entry

Exisitng restaurant entry

Issues and Concerns

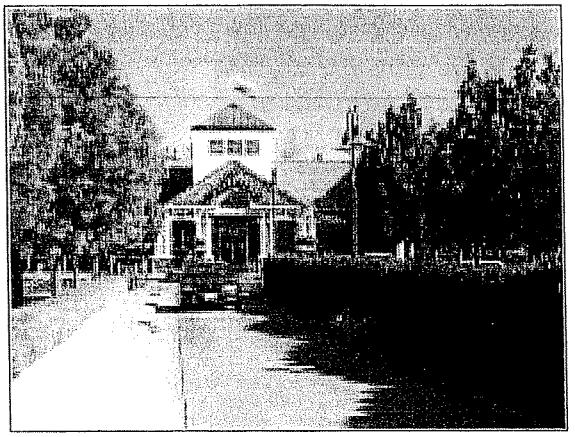
1. I don't see any issues associated with the replacement of the existing steel and glass fence system to the left of the restaurant entry and its extension on either side of the entry.
2. I do, however, think that there is an issue with the substantial closing in of the area at the entry itself. This entry area is essentially the focal point for the entire shopping center from the primary project entry from Los Gatos Blvd. This is clearly shown in the photograph below which was taken prior to the

TEL: 415.331.3795 FAX: 415.331.3797 180 HARBOR DRIVE, SUITE 219, S

EXHIBIT G

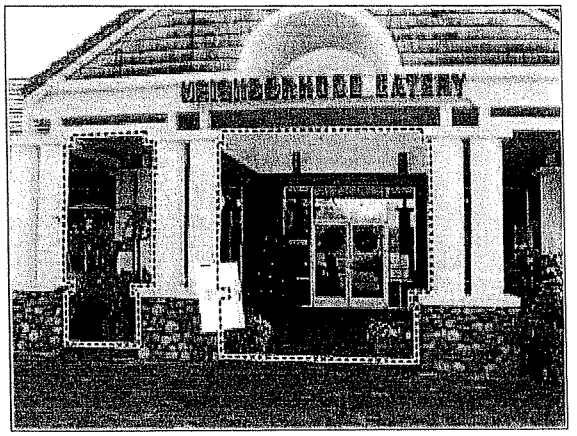
Viva Restaurant occupying the space. The entry gate and the glass panels between the double columns at this entry elements will tend to diminish the depth of the building at the pedestrian level which is a very strong component of the design and very good human scale of the project (see also photo below of the adjacent pedestrian arcade at the grocery store). The drawings are unclear as to the treatment of the front gate, but it is likely that it will be glazed in addition to having the metal infill.

I also am concerned that fitting the infill glass panels between the columns adjacent to the entry will likely be awkward given the complexity of the opening with their column caps and beam at the top, and the column wood and stone base elements.



The restaurant entry serves as a primary focal point for the center at the Los Gatos Blvd. project entry

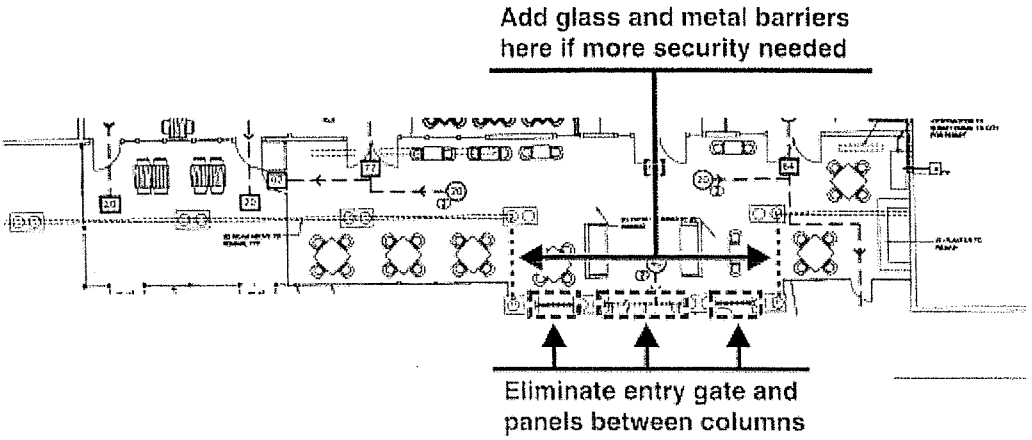
The restaurant entry and the adjacent arcade gives the center its strong sense of human scale and facade depth



The complexity of the profile where the glass screen is proposed will make a clean installation difficult

Recommendations

1. I believe that it would be desirable to keep the entry open as it currently exists. If security is the issue, the use of barriers between the entry columns and the building located at the edge of the outdoor dining areas would be less disruptive of the center's current positive design character.



Joel, please let me know if you have any questions, or if there are specific issues of concern that I did not address.

Sincerely,
CANNON DESIGN GROUP

Larry L. Cannon AICP
President

Date: February 28, 2007
For Agenda Of: February 28, 2007
Agenda Item: 4
DESK ITEM

REPORT TO: The Planning Commission

FROM: The Director of Community Development

LOCATION: 15960-15970 Los Gatos Boulevard
Architecture and Site Application S-07-009
Conditional Use Permit U-07-006

Requesting approval to modify an existing CUP for a restaurant (Viva Primavera) with alcohol service to expand the hours of operation, modify outdoor patio dining area, expand to an adjacent tenant space (formerly High Tech Burrito), expand to full liquor for Viva A Go-Go and allow service of alcohol in the outdoor seating area for Viva A Go-Go, and expand approved entertainment on property zoned C-1. APN 523-01-012 and 013.
PROPERTY OWNER: Colg, LP
APPLICANT: Viva Primavera, LLC

DEEMED COMPLETE: February 12, 2007
FINAL DATE TO TAKE ACTION: August 12, 2007

EXHIBITS: A-H. Previously Submitted

A. REMARKS:

A portion of the Background Section of the previously submitted report was erroneously omitted. The omitted paragraph which should have been placed at the end of the Background Section follows:

In February 2006, staff informed the applicant that the exterior modifications that were done required Architecture and Site approval and that opening at 6:30 AM was not permitted given their approved hours of operation. On August 14, 2006, the applicant submitted an Architecture and Site application and an application to modify the two existing Conditional Use Permits.

Approved by:
Joel Paulson, Associate Planner

Bud N. Lortz,
Director of Community Development

BNL:SB:JP

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ATTACHMENT 5

Viva Primavera, LLC
15970 Los Gatos Blvd.
Los Gatos, California 95032
Phone: (408) 779-3276
Fax: (408) 668-1300

RECEIVED
APR 10 2007
TOWN OF LOS GATOS
PLANNING DIVISION

February 20, 2007

Los Gatos Town Council
110 E. Main Street
Los Gatos, CA 95030

Re: CUP Modifications; Viva Primavera; 15970 Los Gatos Blvd.

Dear Council Members,

On February 28, 2007, the Los Gatos Planning Commission considered our application to modify or clarify certain provisions contained in our Conditional Use Permit. Three such requests were to expand the hours of operation to 1:00am on Fridays, Saturdays, holidays and evenings before holidays; expand the service of liquor, beer and wine to the space formerly occupied by High Tech Burrito and to clarify the definition of incidental entertainment to include jazz trios. The Planning Commission is not recommending approval of these requests either due to lack of information or lack of authority to so recommend.

Although we do not have immediate plans to remain open until 1:00am on Fridays, Saturdays, holidays and evenings before holidays, our request conforms to the standards set forth in the Town of Los Gatos' Policy Regulating the Consumption and Service of Alcoholic Beverages. Please see section II(4) therein pertaining to hours of operation. There is however a provision in Section I that reads as follows: "the service of alcoholic beverages, with or without meals, past 10:00pm is a discretionary privilege to be determined on a case by case basis." Viva has been operating since November 2003 without an alcohol related incident. The Police Department has reviewed our requests and noted that they do not have any concerns.

We are proud of this record and are committed to being responsible servers of alcoholic beverages. In order to maintain this record and ensure responsible service, we intend to engage with the Chief of Police to discuss training programs for servers of alcoholic beverages, included, but not limited to, the Servsafe training program offered by the California Restaurant Association. Furthermore, we are in the process of revising our Employee Handbook and Training Programs to provide comprehensive alcohol service guidance to the members of our staff.

The second and related matter is our request to provide full liquor, beer and wine service in the adjacent space; the space formerly occupied by High Tech Burrito. The Conditional Use Permit for that space already includes the service of beer and wine. We currently have a type 47 liquor

license, a license to sell liquor, beer and wine for on premises consumption. Any service of alcohol in the adjacent space will be pursuant to our existing license, as we do not intend to apply for a new license. We have previously submitted an application with the California Department of Alcoholic Beverage Control (ABC) to expand the square footage of our restaurant to include the adjacent space. We have been advised that our request pending with the ABC will be approved following approval by the Town of Los Gatos. Although we have tentatively given a name to our expanded operation (Viva a Go Go), I would like to clarify that Viva and Viva a Go Go are a single entity and all operations will be connected. I would further add that we intend to create an opening between the two spaces.

I feel the Planning Commission viewed Viva and Viva a Go Go as separate entities and without further information regarding the service of alcoholic beverages, could not recommend approval of liquor service in our expanded operation. As indicated previously, we are committed to being responsible servers of alcoholic beverages. As such, any patrons who order an alcoholic beverage from within Viva a Go Go will only be permitted to do so if their order includes food for dining within. Upon entry of the order, a ticket will be printed at the Viva bar register. The bar tender will prepare the beverage, and it will be delivered to the appropriate customer by one of our trained servers.

Our final request seeks clarification of incidental entertainment as such is permitted by our existing Conditional Use Permit. Viva is a mid scale community restaurant, and our goal is to provide a wonderful dining experience by offering first class service and delicious meals. As part of the Viva experience, we began offering live jazz, primarily on Friday and Saturday nights. We consider the jazz as an accompaniment to dining and not the main focus of the evening. Our jazz offering has been well received, and we attribute much of our success to the inclusion thereof. We have not received complaints from neighbors, as the sound of jazz does not penetrate the walls of the restaurant, nor have we received any notifications from the Town of Los Gatos. We have at all times felt that live jazz trios are within the defines of incidental entertainment. The previously mentioned alcohol policy states that "Entertainment in association with an eating or drinking establishment may be allowed if standards and a permit process are adopted." Please see Section II(3). As of the date hereof, a standards and permit process have not been adopted. We are not asking to Town Council to adopt such a process, but merely seeking clarification of incidental entertainment to include jazz trios.

We hereby respectfully request that the members of the Town Council give us every possible consideration in deciding whether to expand our hours of operation, expand the service of liquor, beer and wine into the newly acquired space and to clarify the definition of incidental entertainment to include live jazz trios.

Respectfully Submitted,

Michael Franges
Owner

Meeting Date: 4/16/07
Subject: 15960 and 15970 Los Gatos Blvd./CUP U-07-006

ATTACHMENT 7

Development Plans
are available for review in the Clerk Department