

## Media Packet: Canh Thai Temple, Appeal of February 9, 2016

A determined neighborhood has been trying to stop the Canh Thai Temple's development at 2532 Klein Road in San Jose. The permit was approved in August 2015, but the neighbors hope their appeal to the Board of Supervisors will overturn that approval.

Media attention from the San Jose Mercury News and the Metro Weekly have focused on the Temple's many code violations. County officials, ranging from Kirk Girard, Director of Planning, to Dave Cortese, the President of the Board of Supervisors, have tried to emphasize that all the character issues are irrelevant, and even the past violations – of building codes, zoning, and health standards – are no longer of concern.

The appellant and the neighbors have responded, in turn, with two counter-arguments. First, the 3+ years of violations should not be ignored due to their length and significance; and due to the chance of recurrence. And second, the appeal is based on six main land-use arguments, only one of which pertains to the historical code violations. The six areas are:

1. Is the use consistent with the County **General Plan**? No.
2. Is the use too intense for the **San Jose Greenbelt**? Yes.
3. Do the number and types of **past violations** point to a predictable permit failure? Yes.
4. Will the planned dining activities overload the **septic system**? Yes.
5. Will there be significant additional cost burden to surrounding **private property** owners? Yes.
6. Will the **traffic** increase pose significant safety risks? Yes.

For more information, please contact Marcy Greeley at (408) 838-7599 or Mark Cao at (714) 699-4447. Our Web site is at <http://canhthaitemple.info/>.

### Purpose of this Informational Packet

- To show that the past violations should not be disregarded.
- To explain the six arguments this appeal relies upon.

### Meeting Between Applicant and Appellant

On Friday, February 5<sup>th</sup>, 2016 the appellant (Mark Cao, along with Marcy Greeley) met with Canh Thai Temple representatives, including Master Huy, Kimberlee Lu (Treasurer) and Gloria Ballard (consultant). Also present were Mike Donohoe representing the office of Dave Cortese; and Kirk Girard, Director of Planning.

The meeting was initiated by Gloria Ballard on behalf of the Temple. Ms. Ballard wanted the two sides to begin a dialog that eventually would improve the relationship of the two sides. She offered engineering improvements, such as landscaping and better sound walls, which she thought could improve the situation for neighbors.

The appellants appreciated the applicant's thoughtfulness. They also stated that the main outstanding issues are about the expected amount of activities being more than what the property can absorb; and the noise nuisances having been more than what the acoustical expert is now projecting. Engineering improvements could help at the margins, but leave the central issues unresolved.

The meeting was a step, but only the first step of many that would be needed to build a broken relationship. The neighbors are united in viewing constructive actions as being louder than words.

### Appellant’s Arguments

#### 1. Is the use consistent with the County General Plan?

The Appellant’s Grounds of Appeal included the following two items:

<b>General Plan</b>	
<b>Item</b>	<b>Summary Opinion</b>
R-HS 41 – To minimize the likelihood of surface or groundwater contamination, and to avoid the need for urban levels of services and infrastructure, allowable density of development in the rural unincorporated area <b>will</b> be maintained at <b>very low density</b> .	Measured by FAR (floor area ratio), this use is much more intense than any other religious institutional use in the unincorporated county. See <a href="#">Appendix 3: Densities of Unincorporated Religious Institutional Uses</a> .
R-GD 2 – For lands outside cities’ Urban Service Areas (USAs) under the County’s land use jurisdiction, <b>only</b> non-urban, <b>low density</b> uses <b>shall</b> be allowed.	

Staff contends that the proposed development is consistent with both R-HS 41 and R-GD 2, based on Canh Thai Temple satisfying R-LU 57’s low **intensity** thresholds.

R-LU 57’s thresholds of building size, daily attendance and events attendance all pertain to intensity, not to density. When comparing Canh Thai to the County’s historical approvals, Canh Thai’s density is very high – it stands *highest* – not very low as the GP requires:

<b>Name</b>	<b>Floor Area Ratio (Building/Property)</b>	<b>Building (sq ft)</b>	<b>Property Size (acres)</b>	<b>Address</b>
Canh Thai Temple	10.3%	7,000	1.56	2532 Klein Road, San Jose 95148
South County Church of Christ	5.5%	4,472	1.88	13485 Colony Ave, San Martin 95046
Cornerstone Church of the Nazarene	3.7%	9,077	5.7	West side of Santa Teresa Blvd (south corner of De Bruin Way)
VVGC Hindu Center	3.0%	16,600	12.7	11355 Monterey Hwy, San Martin 95046
Morgan Hill Bible Church	2.7%	6,576	5.5	15055 Monterey Rd, Morgan Hill CA 95037
San Martin Lion's Club	2.7%	6,990	5.92	12415 Murphy Ave, San Martin 95046
Vo Vu Zen Center	2.5%	5,086	4.6	1300 Church Ave, San Martin 95046
Church of Latter Day Saints	2.3%	7,888	8	23185 Summit Rd, Los Gatos 95033

Name	Floor Area Ratio (Building/Property)	Building (sq ft)	Property Size (acres)	Address
Chinese Church in Christ South Valley	2.3%	10,000	10	20431 McKean Rd, San Jose 95120
Metta Tam Tu Temple	2.3%	10,000	10	610 Fisher Ave, Morgan Hill, CA 95037
Persian Zoroastrian Organization	0.4%	1,890	10.54	10468 Crothers Rd, San Jose 95127
Vaidica Vidhya Ganapathi Center Inc	0.2%	1,147	12.7	11355 Monterey Hwy, San Martin 95046

## 2. Is the use too intense for the San Jose Greenbelt?

Below is an excerpt from Roma Dawson's letter to Supervisor Wasserman:

I am asking you to view the Canh Thai Temple project with a common sense, big picture approach. It is located in San Jose's Greenbelt and is above its Greenline drawn roughly at the 15% slope line. Please note its "architectural entrance feature" is a mere 47 feet - a few car lengths - from the San Jose/Santa Clara County border (see Findings in Staff Report). The parcel edge is at the Greenline. It is worth asking County Counsel what problems could arise if the Board makes a decision to respect the City's designation and uses GP2040 standards.

Almost all of the neighbors that will endure impacts of the Temple are citizens of San Jose. The County staff-mandated single point of ingress/egress is via Murillo, a City street **not** maintained by the County. I respectfully submit that this parcel is **not** in a remote rural area like San Martin. It is part of a San Jose neighborhood. It makes common sense to apply San Jose GP rules. San Jose Planning staff in a letter states Canh Thai Temple would most likely not be permitted. (The disturbance of more than 50% of site is probably enough to trigger denial.)

I suspect most of your constituents would agree with San Jose voters. In November 2000, over 80% of them voted to protect the Greenbelt, protect our Open Hillside and keep urban intensification on the urban side of the Greenline. Given heightened interest in climate change prevention and open space, the measure on the ballot today would almost certainly receive an even higher percentage. Canh Thai Temple gets to "have its cake and eat it too." The Temple has the advantages of an urban environment but gets to develop by Santa Clara County rural regulations. I doubt if the average person would find this comprehensible, fair or sensible.

### 3. Are the violations to be considered?

The Temple now owes \$90,400 in fines. As long as the fine is still outstanding, the violations may still be a basis by which to deny the permit.

Our life experiences tell us that people's past behavior is the best predictor of future behavior. Every time we apply for a loan, our FICO score and credit history are checked. A dramatic break from the past happens only when someone hits rock bottom, causing a real change of heart.

Lots of people have imposed extra conditions on the permit for Canh Thai Temple, due to all the past violations. That would include Planning Staff, the Planning Commissioners and most recently the Supervisors. As just one example, one of the Supervisor offices asked that a condition be added so that the Temple will not be used as a monastery. This should have been understood anyway, yet the condition had to be spelled out.

And so this organization, it seems, will have their permit, but with a straightjacket of unusual conditions. We are entering this surreal world, in which the County is acting as tough as the Gestapo, but has the budget more like the PTA's and the temperament of the high school Chess Club. Nobody believes the Sheriff will be waiting with handcuffs for the 51<sup>st</sup> person to come worship, just because the permit specifies a max of 50.

Revocation of a church permit is not an option (a whole community is revoked, not just an operator – and there is federal religious freedom of exercise to be considered – and there's the fact that nobody remembers a local church permit having been revoked, ever). But we're supposed to believe that revocation is possible – because this operator has already done so much demonstrable financial damage to their surrounding Evergreen community, and because they, of a large footprint, can easily do more of the same in the future, well before any County response team can make it onsite.

The County is deepening its Canh Thai Temple problem with an approval. Last but not least, the surrounding neighbors have been harmed in the past. They think the proposed permit, with unrealistic conditions, sets the table for predictable future conflict.

### 4. Incidental dining activities are likely to stress the drain fields

It is uncontested that the applicant intends to host dining in the future. All their video recorded and photographed events and services over a period of 3 years showed the attendees sitting down for full meals. At the 8/27/2015 hearing, operator Kimberlee Lu stated on record that she will cater food in the future, but she stressed it would be scaled refreshments to be served in "little cups" and "little bowls." Eating of vegetarian meals has an inseparable Buddhist religious meaning of restraint and purification.

The Planning Department itself has made it a permit condition to prohibit the sale of food. In the appeal, when we asked that servicing of food be prohibited, the Staff response was as follows (Feb 9<sup>th</sup> Staff Report, p. 59):

No restaurant or sales of food are allowed under the use permit condition approved by the Planning Commission. Sharing of food is integral to religious uses and would be considered an incidental use to the religious use. The onsite wastewater system is sized to accommodate 3 bedrooms and assembly hall with 100 seats. No commercial kitchen or restaurant is approved.

The effect is that a restaurant is being allowed, except for the part where they openly cook on site. Planning is not anticipating that the dine-in attendees will need to use the restrooms. That assumption has created the problem of an under-capacity septic system.

The Department of Environmental Health’s Onsite Systems Manual, p. 57, states the following criteria:

Table 3-2: Wastewater Design Flow Guidelines  
Multiunit and Non-residential Facilities

Type of Business or Facility	Design flow (gallons per day)
Church and assembly halls (per seat) – without kitchen	5
Church and assembly halls (per seat) – with kitchen	15
Restaurants and Food Service –toilet and kitchen wastes (per patron)	10
Restaurants and Food Service –kitchen wastes only (per meal served)	5

The amount of 5 gallons per day per seat was deemed as acceptable by County DEH to be applied to Canh Thai Temple. Knowing that catered food would be brought in (or a hidden commercial kitchen, which certainly would be additional stress), and proven by the neighbors the intention of full-meal service, the extrapolated amount of 10 gallons per day per seat-and-meal should instead have been used, due to the need for patrons’ restroom use (15 gallons per day per seat-and-meal, if using a hidden commercial kitchen). Under any scenario, the drain field has been designed too small. The result will be early failure of the septic system and permanent use of chemical toilets.

#### 5. Future maintenance costs for neighbors

Per the Staff Report for 2/9/2016, p. 781, both sides stipulate that public utilities are under the “north driveway” that serves the “rear flag lot” (2526 Klein Rd). The owners of the rear flag lot wish for the acknowledgment that their cost of utilities maintenance will be significantly higher in the future due to having to tear and rebuild the driveway with each maintenance or repair.

Similarly, neighbors along Murillo Ave, such as the family at 2562 Klein Rd, wish for the acknowledgment that their cost of utilities maintenance will be significantly higher in the future due to additional stresses on Murillo Ave, due to large tour buses for example. The family at 2562 Klein Rd has stated, elsewhere, that they had three water pipe breakages in the past under Murillo Ave which they had to pay for solely out of pocket.

## 6. Blind Curve at the intersection of Murillo and Klein



Last month, we alerted Planning Staff to a blind curve just 300 feet from the site. Although the problem is preexisting, the site's future traffic will multiply the risks.

The traffic consultant responded, yet made very weak arguments in the follow respects.

- They made several ad-hoc arguments and numeric adjustments that ignore how Caltrans sets safety standards.
- They did not come to study the sight distance. Instead they relied on Google aerial and street-view photos, which just cannot be an accurate basis of establishing the sight distance.
- They failed to understand that increased traffic volume increases the risk of an accident.
- Lastly, these streets are in the City jurisdiction. The County cannot dictate such things as maintenance of landscaping.

Please put residential safety first. We've said all along that the issue is not about your karma running over my dogma. It's about your **car** running over my **dog**.

### [Code Violators and the County – by Trina Hineser, San Martin Neighborhood Alliance](#)

Though the Canh Thai Temple does not directly impact San Martin; I am speaking on behalf of SMNA in reference to applicants like this who have had years of code violations but somehow are approved and rewarded by the Planning Commission. This Temple is just one of many types of “code violator” applicants who have been approved over the years by the Planning Commission. Years of evidence showing blatant disregard for Santa Clara County ordinance somehow become irrelevant. But; once a “code violator” applicant pays fees to proceed with their project, the many years of Code Violations are said not to be part of what the Planning Commissioners or Planning Staff uses to base their approval of a project. Instead, the individuals who have been harmed the most by the “code violator” and who diligently reported violations for years to the appropriate County Departments for enforcement are told: The applicant has suddenly resolved all violations and will no longer be a menace to the neighborhood. “Mitigations” are expected to magically create some form of assurance to neighborhoods that have been subjected for years to the havoc of the “code violator”. Individual property owners that have endured years of emotional discord due to the County’s failure to implement and fine violators in a

timely manner, are instead asked to give the “code violator” another chance and to “trust” the County Departments that have previously failed them. Individual neighborhoods are again left with the responsibility of “reporting” the violations. Meanwhile, the County is sure that the applicant will no longer create the problems, because they “promised.”

### [Inner Peace or Outer Distress? - By Helen Ansted](#)

My name is Helen Ansted and I am a resident of Groesbeck Hill Drive, just down the street from the development site.

We have previously provided detailed and documented history of the 150 violations for a wide variety of illegal uses and code violations so I am not going to list them now. Suffice it to say, the violations went on for four years with an escalating response from the County that included a \$100/day fine, cease and desist order, temporary restraining orders and a preliminary injunction of all activity issued in January 2015. The temple organization ignored all of these and continued illegal activity.

The two most recent official actions issued just prior to the Planning Commission hearing have had the most effect

June 2015: The Planning Dept threatened to recommend a denial of the permit if code violations were not remedied.

August 2015: Code Enforcement issued a compliance order threatening a \$1,000/day fine if trash piled on the property, a toilet and three illegal structure were not removed.

The subsequent approval of the Conditional Use Permit by the Planning Commission in late August 2015 was contingent on compliance with the order.

The temple organization completed the majority of the cleanup by the deadline. We view this as their realization this was the only path to obtaining the permit, not the realization of a need to change behavior. Good behavior, when the result of coercion, does not show any change of heart.

The Planning Commission, the applicants architect and engineer have all told our neighborhood group the Temple organization and the property owner should be given a second chance. They have been given many, many “second chances” and only modified their behavior at the last possible moment prior to the Planning Commission meeting. Strict conditions, as contained in the permit actually trigger more violations. If you ignore the behavior of the past 3+ years and deny our appeal, the temple will be built and it will become the neighbors’ job to monitor and report this organization.

### [A Tale of Two Vietnamese Temples – by Doan Thi Kieu Nga](#)

On January 28<sup>th</sup>, 2016, the Metta Tam Tu Temple passed through the County Planning Commission without a glitch. This was despite some similarities with Canh Thai Temple: Metta is expanding their usage, as is Canh Thai. Metta is converting an unpermitted use to be permitted, as is Canh Thai. Both are Vietnamese Buddhist pagodas, which can get fairly noisy.

The difference is that Metta is on a large parcel with a low Floor Area Ratio. Metta is ideally situated in an agricultural area, posing very few problems for neighbors. Whenever nuisances did occur, Metta addressed the concerns. As a result, Metta had dozens of emails in support, and none in

opposition. Canh Thai Temple has had opposition emails in the hundreds, and none in support from the public.

At the Metta hearing, prominent members of the Vietnamese American community spoke in support of the operation, including wealthy entrepreneurs and doctors. For Canh Thai, no Vietnamese American has spoken for it, despite the fame Canh Thai has earned for themselves.

Vietnamese Americans are sick and tired of embarrassments to their community. Outspoken and violent McCarthy-ites, still fighting the Vietnam War, embarrassed this community to no end for decades. Every year, we hear of raids at Vietnamese cafes that are only fronts for sex and gambling. The Canh Thai Temple does not exemplify what's best or even what's acceptable to my community.

### [Brining Activities Indoors – by Bill Harrington](#)

According to the applicant, moving of all activities indoors will solve almost all problems, including noise and even some compliance issues. We caution against expecting too much.

Please note that for most of its history, the site had two mobile homes, so most activities were already indoors. The only activity chronically outdoors were special events such as the Mother's Day event, one day per year, and weekly patio dining. So all other worship events have always been indoors.

Various modeling problems by the noise consultant leaves the neighborhood vulnerable to noise problems. For example, the consultant correctly assumed open windows letting sound escape, but failed to account for indoor amplification which is necessary for the master to lead the service.

The result will be that amplified sound will continue to reverberate through the hills, echoing from home to home as has happened in the past.



## A Toilet and Three Hex Mirrors – by Thuy-Lan Le



Our family keeps hearing from the supporters of the temple that the unneighborly acts don't matter. But, if I may remind you, they would be the first permit holders, and they might be the only one. To my family, this permit is not some abstract exercise. The reality we've felt for four years includes a dirty toilet placed on the property line as close as possible to our front door; and mirror spells, again pointed directly at us. These were acts of hate and cultural harassment, and not once did the County come to our aid.

We have sent you emails documenting why our utility repair costs will skyrocket as a result of the Temple's unauthorized asphalt improvements in 2012; and the improvements in the future. The 350-foot driveway could easily cost \$50,000, so our costs of utility maintenance will include demolition and rebuilding of that driveway. The County neglected our family in the past, but what about now?

### Count of Support for Appeal – by Jeff Johnston

Here are some stats for you. Enthusiastic supporters on our email list: 81 people

Number of citizens who met with Supervisor Cortese on January 19<sup>th</sup>: 42

Number of public emails opposing the Temple: more than 300

Number of emails to County in support of the Temple: zero, none.

Number of Web site hits we've gotten: over 4,500.

Our campaign Web site's Google ranking: #1

Number of residents of our Evergreen zip code: over 45,000

Please hear our concerns and realize we would like to think that you, our elected officials, are listening to us. We are told this is a local-serving use, but none of us locals support it. Please support us. We'll remember it and show our thanks in the future, any way we can.

### Nobody Does It Like Sarah Gill – by Sarah Gill

**To:** "dave cortese", "cindy chavez", "ken yeager", "mike wasserman", "supervisor simitian"

**Sent:** Thursday, February 4, 2016 8:18:52 PM

**Subject:** Canh Thai Temple

Dear Board of Supervisors,

My name is Sarah Gill and I live near the corner of Klein and Murillo. I am writing to express my concerns about the Canh Thai Temple project that you will be voting on next week. I am sincerely hoping that you imagine your own family living next to this temple and then make the right decision from your conscience, hopefully denying the approval of this project and CUP. Your approval of this project will change our neighborhood and our lives forever for the worse.

First of all I want to say that I am a strong believer in religious freedom and would never side up with anyone showing any signs of bigotry based on color, race or religion. I am a person of faith myself and our 9th prophet sacrificed his life to defend another religion and he was beheaded in public for taking that stand. So for us, it is not the freedom of just our own religion, but ensuring we all enjoy the same freedom.

I am not writing to you today because I have anything against Buddhism. To the contrary, I grew up reading about Buddha in our text books and have tremendous love and respect for him in my heart. I am writing to say that this is not the right place or the right-size lot for this type of institutional use.

- This project needs a much larger lot for it to work in Evergreen.
- Or, this project needs to be in a mixed use, commercial or industrial area and not in a quiet rural residential area.

My reasons and concerns are as following:

- This temple is surrounded by residential homes in very close proximity all around it. If approved, it will certainly cause tremendous noise nuisance and traffic nuisance no matter what these run-of-the-mill noise and traffic reports say. I think I read somewhere that they will be using sound amplification inside. Can you imagine that next to your home?
- I could see this temple being approved if it was a much larger lot. Please come and see for yourself how small this lot is for a temple. It is smaller than some of the residential uses around it.
- Do you think it is fair to approve a new project, but not care for all the hard working, middle class people who have lived in this neighborhood for a long time? I am not talking about the negative impact on the home prices- I am talking about the negative impact on the quality of our everyday life. We come home after a hard day's work to find some peace and respite. A home is supposed to be a sanctuary and not something that you have to dread. We now will be coming home to face the noise and the traffic, if this project is approved. Does anyone on the county board care about an average person or do you only care for a business? A business is a great thing to have so long it is at the right location. This is not the right location for a temple.
- Do you think it is fair to block my friend and neighbor Thuy Lan Le's access to her home as she will need to share the driveway with this temple, her house being on the back. Knowing that this temple has attracted large crowds in the past, an emergency vehicle might not be able to get to Thuy and her family, if ever needed. Please imagine your own families in this situation.
- There is only a two way stop at Klein and Murillo. Given the blind corner on the East of this intersection, are you going to have the city put a 4-way stop there or we are just going to wait for a disaster to happen.

- Murillo is really a narrow rural street around Klein and Murillo. Are you going to make the temple owners pay for improvements to the street to widen it since they are going to use it more than an average residence in the area?
- Given the historical code violations of the operators of this temple, do you think they will become law abiding all of a sudden. We are waiting for a huge environmental disaster to happen when the drain-field designed for only small crowds overflows when this temple brings large crowds despite the planning department's restrictions in the CUP.
- Can you give us an example of a religious CUP that was revoked for zoning violations after the fact. Why is the county so desperate to approve this project? The county has still not collected over \$100,000 in fines that have accumulated against this temple. How can we believe that the CUP will be revoked upon future code violations when we do not even see the county collecting the fines for their past bad behavior?
- Why are we not saying that this is a 7,000 sf building on a small lot and it is not meeting the R-LU-57 guidelines? How is a monk not a part of the business and how is not his residence a part of the business? It is all a part of the same CUP. It is all one building. The planning department is desperately trying to fit this project in the R-LU-57 guidelines even when their rationale is not making sense.

I am humbly requesting you to take a serious look at this project and say "no" as this is not the right location or the right size lot for this institution. I am sincerely hoping that you will do the right thing and not let the average hard working people in this neighborhood down who only want to preserve their neighborhood from a wrong project that should be either in a mix-use zoning or commercial or industrial zoning or on a much larger lot.

Thank you so much for your public service.

Best regards,

Sarah Gill