

City Council Chamber
200 Old Bernal Avenue, Pleasanton, CA 94566

DRAFT

Wednesday, June 24, 2015

CALL TO ORDER

The Planning Commission Meeting of June 24, 2015, was called to order at 7:00 p.m. by Chair Allen.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by the Commission.

1. ROLL CALL

Staff Members Present: Adam Weinstein, Planning Manager; Julie Harryman, Assistant City Attorney; Brian Dolan, Assistant City Manager; Jenny Soo, Associate Planner; Mike Tassano, City Traffic Engineer; and Maria L. Hoey, Recording Secretary

Commissioners Present: Commissioners Nancy Allen, Jack Balch, Greg O'Connor, and Gina Piper
Commissioner David Nagler arrived at 7:10 p.m.

Commissioners Absent: Commissioner Herb Ritter

2. APPROVAL OF MINUTES

a. May 27, 2015

Chair Allen advised that the May 27, 2015 Meeting Minutes would be considered later due to lack of a voting quorum.

b. June 10, 2015

Commissioner O'Connor moved to approve the Minutes of the June 10, 2015 Meeting, as submitted.

Commissioner Piper seconded the motion.

ROLL CALL VOTE:

AYES: Commissioners Allen, O'Connor, and Piper

NOES: None

ABSTAIN: Commissioner Balch

RECUSED: None

ABSENT: Commissioners Nagler and Ritter

3. MEETING OPEN FOR ANY MEMBER OF THE AUDIENCE TO ADDRESS THE PLANNING COMMISSION ON ANY ITEM WHICH IS NOT ALREADY ON THE AGENDA

There were no members of the audience wishing to address the Commission.

4. REVISIONS TO THE AGENDA

Adam Weinstein advised that there were no revisions to the Agenda.

5. CONSENT CALENDAR

Consent Calendar items are considered routine and will be enacted, approved, or adopted by one motion unless a request for removal for discussion or explanation is received from the Planning Commission or a member of the public by submitting a speaker card for that item.

Commissioner Balch advised that he would be recusing himself from any discussion on this item, due to a conflict of interest.

a. Tract 8246, Summerhill Homes

Application for Vesting Tentative Map approval to subdivide an approximately 5.9-acre parcel located at 5850 West Las Positas Blvd. into 25 parcels consisting of 16 parcels for residential buildings containing a total of 94 condominium units and nine common open space parcels (approved under PUD-81-30-89D). Zoning for the property is PUD-MU (Planned Unit Development – Mixed Use) District.

Commissioner O'Connor moved to find that there are no new or changed circumstances which require additional California Environmental Quality Act (CEQA) review of the project; to make the Tentative Map findings as stated in the staff report; and to approve Vesting Tentative Tract Map 8246, subject to the Conditions of Approval as listed in Exhibit A of the staff report.

Commissioner Piper seconded the motion.

ROLL CALL VOTE:

AYES: Commissioners Allen, O'Connor, and Piper
NOES: None
ABSTAIN: None
RECUSED: Commissioner Balch
ABSENT: Commissioner Nagler and Ritter

Resolution No. PC-2015-18 approving Vesting Tentative Tract Map 8246 was entered and adopted as motioned.

Commissioner Nagler arrived at this point and joined the Commissioners at the dais.

6. PUBLIC HEARING AND OTHER MATTERS

- a. PUD-25, Greenbriar Homes Communities, Lund Ranch II
Applications for: (1) Planned Unit Development (PUD) Rezoning and Development Plan approval to construct 50 single-family, two-story homes and related improvements on the approximately 194.7-acre Lund Ranch II property located at 1500 Lund Ranch Road at the end of Lund Ranch Road; (2) Certification of the Final Environmental Impact Report (EIR) prepared for the project; and (3) Development Agreement to vest entitlements for the project. Zoning for the property is PUD-LDR/OS (Planned Unit Development – Low Density Residential/Open Space) District.

Brian Dolan presented the staff report, noting that it has been a long road to get to this point. He stated that when he joined the City seven years ago, one of the first projects he was introduced to was this project, and there have been various iterations of that over that period of time. He indicated that obviously, the passing of Measure PP had an impact on the evolution of that project, and because staff and the Commission has gone through some of the history of that before, he was going to focus his presentation on just a few key items.

Mr. Dolan stated that the Commission had a Work Session on this item just a few months ago, and so he is not going to get into a great deal of detail but will repeat some of the information. He outlined his presentation, indicating that he will have a quick project summary; talk through a little bit through the project issues, at the end of which he would touch on some issues that came up in the Work Session and subsequently from the Planning Commission that staff has been working on to provide additional information, most of which is in the staff report but which the Commission can discuss if there are any questions; and finally staff's recommendation.

PROJECT SUMMARY

Mr. Dolan started by presenting a slide of an aerial view of the project site with the surrounding land uses: to the north of the project is the Kottinger neighborhood and the Bonde development; to the east is the Foley property; to the south is the Spotorno property; and to the west are the Ventana Hills and Sycamore Heights developments.

Mr. Dolan then displayed the site development plan and pointed out the valley or bowl in the middle of the site, which is the area where all the development is proposed, off of Lund Ranch Road with a series of three different cul-de-sacs that extend off of the new extension of Lund Ranch Road. He described the project development plan consisting of 50 units, 48 of which are production homes and two custom homes on two very large estate lots. He noted that the developed portion of the site would be 33.8 acres, and 160.9 acres would be preserved as permanent open space dedicated to the City; there is one connection to Lund Ranch Road with no other proposed street connections to Middleton Place, to Sunset Creek Lane, or to the Foley property. He indicated that there are three different building plans that range in square footage from 4,100 square feet to about 4,500 square feet, one and two stories in height with four and five bedrooms.

PROJECT ISSUES

Road Access

Mr. Dolan stated that this is the biggest issue related to the project and has been the subject of the most controversy. He indicated that the developer proposed access only through Lund Ranch Road, and a lot of the discussion related to whether or not that would be the only access. He noted, however, that the Environmental Impact Report (EIR) did analyze a total of eight alternatives, which was narrowed down at the Work Session to three alternatives, which seem to be scenarios which frame the range of realistic possibilities for access:

Scenario 1. This is the proposed project. The EIR identified that the trip generation from the project would be 550 trips. In this scenario, all the trips would all go out Lund Ranch Road and split out to Independence Road. All of the project traffic would go on Ventana Hills.

Scenario 3. This scenario has a double connection, and the 550 trips would be split between Lund Ranch Road and Sunset Creek Lane. The numbers are estimates based on staff's observation from other people in the area and which way they head from this area when going to work or other places. The choices made by the people who move in obviously might be different from these assumptions.

Scenario 6. This basically identified the Bonde Ranch agreement which was created as a part of the Bonde Ranch approval process. It basically promised the Ventana Hills neighborhood that there would be no connection to Lund Ranch Road, and everything on the Lund Ranch II property would ultimately be connected to either Sunset Creek Lane or Sycamore Creek Way. In addition, the traffic from Middleton Place, which currently goes out through Ventana Hills, would be re-routed on roads that have already been constructed but connect to project roads in Lund Ranch II; and that would be sent out the other way as well. So all 550 trips, plus 140 trips from Middleton Place, would end up on Sunset Creek Lane, and then they would have some choices off of Sunset Creek Lane or down to Sycamore Creek Way.

Mr. Dolan indicated that when the staff recommendation is discussed later in the presentation, Mike Tassano, City Traffic Engineer, may present a few more of these types of trip distribution and trip generation slides related to staff's actual recommendation.

Measure PP

Mr. Dolan stated that the City Council and previous Planning Commissions have been struggling with the interpretation of Measure PP, and the last official action that the Council took was its decision not to adopt an implementing ordinance and to use the language in Measure PP as it is written and interpret it on a case-by-case basis as projects came forward. He noted that there have been no final determination on some of the issues that have come up:

Measuring slope. This has not been that controversial. Staff has been using a two-foot contour for measuring slope. The results of some test cases with various methodologies of doing a more crude measurement of slope were not that much different, so staff continues to use the two-foot contour measurement as the most conservative way of measuring slope and continues to recommend doing it that way.

Identifying ridges and their end points. In terms of where the ridges are in Lund Ranch, staff used a certain methodology and ended up mapping the ridges, using the definition that the ridge point ended when it stopped going up and only continued going down. Some people have expressed concern about that methodology. Staff recognizes it is not perfect, but it seemed to work in this case; and since this is being done on a case-by-case basis, staff continues to recommend this method on Lund Ranch. Staff did commit, however, in its conversations with others who seem to be more concerned about future projects that might be affected by Measure PP, that instead of trying to come up with a perfect definition and applying it to an infinite number of possibilities, what staff really should do, in advance of any projects excluding this one, is to go ahead and take the time to map all the ridges on properties that would be subject to Measure PP or at least the ones very likely to be developed, and then have a public discussion about whether there is agreement on what the ridgelines are. While that will take some time and some back and forth among community members, staff is committed to it, all the way up to the City Manager. In this particular case, there has not been much controversy about which ridge is right and which land forms were identified as ridges, and staff just provided some of the key elevation points at the ends of the ridges and at the bottom of the valley, and some of the elevations of particular interest might be the elevations of the custom lots, particularly Lot 32, which is quite a bit higher than the other homes proposed at the bottom of the valley.

Measuring ridgeline setback to building pad versus top of structure. Staff is proposing a new methodology on how to determine the ridgeline setback. Measure PP states that no building is permitted within a 100-foot vertical setback from the top of a ridge. Staff was struggling with how to measure that and came up with a methodology that it has previously talked about. It basically involves taking the ridgeline and drawing a line straight out from the top, and then saying that no home could be placed anywhere that came within 100 feet of that straight line. This brought about a discussion of whether one is grading to the pad or to the top, and there were good arguments on both sides. It

was really problematic because the ridge is constantly moving, so whatever height one is measuring from could be different from one end of the house to the other, and it almost became a silly exercise to really try and implement that methodology to the letter of the law. The other thing that it did was penalize homes that were adjacent to but not on hills that were very short, and that seemed counter-intuitive to the purpose of Measure PP, such that the lower the hill the more punitive the rule was.

As a result, staff came up with this other methodology that is much cleaner, and the applicants have been pushing for this as this was the methodology they came up with in the beginning. Staff considered it and explored the other option, but in the end, staff believes it is the best methodology because it can actually be implemented on a consistent basis regardless of the topographic situation. In this particular methodology, measurement starts at the top of the ridge, goes 100 feet straight down, and then turns at a 90-degree angle towards daylight: that is the area, 100 feet down, that is protected; no grading can be done on that hillside to put a pad, but grading can be done in the valley below to put a pad in. Staff applied it to this project, and it seems to work in this particular case. There are no homes proposed that are going to be breaking a ridgeline or coming close to somebody's view or ridgeline, and that is really what it is all about in terms of Measure PP. Because measurement will be done on a case-by-case basis, this methodology could be applied to the topography on another project site to see if it seemed reasonable.

Is a road a structure? Measure PP, in part, states: "*Ridgelines and hillsides should be protected. Housing units and structures shall not be placed on slopes of 25 percent or greater, or within 100 vertical feet of a ridgeline. No grading to construct residential or commercial structures shall occur on hillside slopes 25 percent or greater, or within 100 vertical feet of a ridgeline.*" There have been very eloquent arguments on both sides, and reasonable people can come to different conclusions on this issue. Some people have reached out to other definitions of structures and said this definition of structure does seem to include roads, and, therefore, a road is a structure and is prohibited in these areas by Measure PP. Others have said that if Measure PP meant to prohibit roads, it would have listed roads. Because Measure PP does not address it directly, the City has the ability to decide what was meant by Measure PP, and the Commission gets to be a part of that decision. Ultimately, it is a City Council decision. Staff is proposing that the Commission interpret Measure PP as not prohibiting roads because it is necessary to implement staff's recommendation.

Man-made slopes. This has not been terribly controversial in terms of the concept, and almost everyone agrees in the cases here on Lund Ranch: there is one little land form where a road was needed, and instead of going over it, a flat road was bulldozed straight through, resulting in steep slopes on either side. The same thing happened to create a flat pad to put the barn in by the creek. Some grading was done to create the usable farm area. Nobody seems to disagree that that concept is incorrect, although there were some questions about whether or not the natural slopes around here exceeded 25 percent. Staff asked the project engineers to take a very detailed technical look at it, so one can see a section taken that cuts across both of those man-made areas and the information done by engineers using the topographic map. The existing areas were never graded; the maximum is 18 percent. There is a

projection of the area that was created before that went up to 21.9 percent, but none of it appears to have ever been 25 percent.

Prior Council Commitments

Mr. Dolan stated that as previously mentioned, back when Bonde Ranch was being considered, the Ventana Hills neighborhood was opposed to that project due to traffic. He indicated that the project was ultimately approved, with an indication from the Council that the intent in the long run is that the neighborhood will not have the traffic from Middleton Place because that will be sent out to Lund Ranch Road and connected to Sunset Creek Lane or Sycamore Creek Way, and the neighborhood will not have the Lund Ranch project traffic either. He pointed out that while that was part of the dialogue that was put into writing, as Conditions of Approval for the Bonde Ranch project, they unfortunately do not apply or have anything to do with the owner of the Lund Ranch II project. He noted that there were some private agreements that the Conditions of Approval actually referred to, but again, those private agreements do not have a legal hold on the current Lund Ranch II project applicant and current property owner.

Mr. Dolan stated that another thing to consider is that the original approval of Ventana Hills did anticipate connection of development on the Lund Ranch II site to connect to Lund Ranch Road, which is a dead end that goes into vacant property. He added that the staff report talks about this being a connection to potential future development. He indicated, however, that when Bonde Ranch came forward, there was some different thinking that actually made its way into some of the General Plan and Specific Plan documents. He noted that it was the thinking of the day and would really have been the final say on the issue about where this project is going to connect, until the passage of Measure PP changed that dialogue.

Mr. Dolan reiterated and wanted to reaffirm that, as was discussed at length at the Work Session, the City Attorney has concluded that the private agreements that came out of the discussion about Bonde Ranch and the conditions on that project do not legally bind the current property owner or the City. He indicated that because this is not a legal issue but a policy question, the issue then really becomes whether the City is inclined to implement the previous commitments versus what could be described as new circumstances after all these years, with the new circumstances being: (1) the passage of time; (2) the dramatic reduction in units for this proposed project which used to be a 150-unit project and is now down to 50 units; and (3) the considerations about access relative to the restrictions of Measure PP.

Environmental Impacts of Alternative Access

Mr. Dolan stated that there was a fair amount of discussion at the Work Session that those who oppose the secondary access included in staff's recommendation cited that that was not the right thing to do because of the additional environmental impacts and questioned whether or not the EIR adequately described those impacts. He indicated that staff's position is that it does, it identifies what they would be, and staff acknowledged that there will be more environmental impacts:

Biological Impacts. The alternative access scenarios require crossing the ephemeral creek along the southern end of the site and would result in the loss of habitat of the California Tiger Salamander and indirect disturbance to nesting and other birds and roosting special status bat species through the loss of additional trees. There will also be some fairly complex permitting processes required to put anything in a drainage channel in the wetlands: approvals from the Army Corps of Engineer, the Regional Quality Water Control Board, and the California Department of Fish and Wildlife would need to be done.

Geology and Soils Impacts. There would also be some geology and soils impacts to putting a road up the side of the hill to connect to Sunset Creek Lane. Grading on the side of the road has stability concerns, both in the structural components of the construction as well as long-term erosion control that have to be dealt with.

Visual Impacts. The grading and potential retaining walls required for building a road up the side of that small hill to connect to Sunset Creek Lane would change the appearance of the north-facing slope. This is an interesting situation because that hillside is not really that visible; it is hardly visible from public vantage places and certainly not from public roads. It is visible from some of the trails and from some of the private homes; the staff report provides some visual simulations of what that might look like.

Mr. Dolan stated that all these additional environmental impacts that have been identified in the EIR can be mitigated through fairly routine mitigation measures. He indicated that the geology and erosion impacts are pretty basic problems to solve and is done all the time: crossing creeks happens, permits are obtained, and the bridge or some kind of crossing is built. He continued that the biological impacts are all mitigatable: it will take time, cost money, and require expertise and review; but these are not show-stopper types of environmental impacts, and they are routinely mitigated throughout this City for many, many, projects.

Issues from the Work Session and the Planning Commission

Mr. Dolan then addressed the issues raised by the Planning Commission at the Work Session:

Parks. A Commissioner suggested that the project include a park. Staff figured out basically the distance from the project to the existing park and determined that it is within the distance suggested in Planning documents as the ideal for a neighborhood park. Additionally, because there is so little land that is actually suitable for either development or a park, it is difficult to recommend that a park be included since one has already existed that meets the City's standards.

Tree removal. A Commissioner stated that the mitigations suggested in terms of tree removal was a little too loose. Staff added some conditions to nail down what the tree mitigation would be and the ratio for various kinds of trees. Staff talked to the Commissioner who raised that issue, who seemed to be satisfied with the condition that would be adequately mitigating that loss.

Visual impacts of the potential Sunset Creek connection. Staff provided some visual simulations in the staff report demonstrating these visual impacts.

Analysis methodologies. A Commissioner basically asked staff to do a survey of how other communities tackle these issues. Staff researched what relevant and nearby communities do and did not find an absolute pattern; each community seems to treat it slightly differently. Documentation of that research is provided in the staff report.

Water supply. This issue, which was obviously a big part of the dialogue in the discussion on the East Pleasanton Specific Plan (EPSP) where there is no General Plan designation that allows the uses being proposed; the designation for Lund Ranch site does. In the EPSP discussion, there were choices of whether land was going to be annexed to the City; Lund Ranch is already in the City. The EPSP proposal was to change what zoning that did exist in the City from Industrial to Residential; Lund Ranch already has zoning for residential development. The circumstances are not identical. An attachment to the staff report is a memo provided by Acting City Attorney Julie Harryman which addresses the question of whether or not the City has the ability to say no to this development based on water.

Staff Recommendation

Mr. Dolan stated that staff is recommending that the Commission take all the actions necessary to approve the project, which would require certifying the Final EIR, approving the PUD, approving the Development Agreement, approving the PUD Development Plan subject to the recommended Conditions of Approval and staff's memo on some minor revisions: minor adjustments to the setbacks discussed with the applicant very recently, and some additional conditions requested by Planning Commissioners to tighten things up, including a condition that is currently being required of all existing construction projects that if the drought it still going on when this project is built, recycled water must be used for dust control. He added that staff is recommending that the project be amended to reflect Option 3 in the staff report: that the project be re-designed to create a cul-de-sac serving ten homes off of Lund Ranch Road or some number that the Commission might want to consider other than ten; the Middleton Place residents would continue to use the access that they currently have; and the remaining project homes would be accessed from a new project roadway that would have to cross the creek, cut across the hill, and connect to Sunset Creek Lane. He noted that the implications of that would obviously be the assumption that a road can do that and do it within the rules of Measure PP, and staff is suggesting that the Commission has the ability to conclude that it can, but that the traffic essentially be split as proposed. He further noted that staff's recommendation is the best way to balance all of the concerns raised by City policies, the previous discussions amongst the City's decision-makers, and the input of the community.

Commissioner Balch inquired what the traffic impact would be on the split 10/40 that staff is proposing.

Mr. Dolan displayed a graphic that shows that split: the total trip generation is still 550, with ten homes using one access and the rest going out the other way.

Mr. Tassano stated that the trip generation is pretty straight forward. He explained that the general rule-of-thumb is ten trips per vehicle, and the study used a calculation for the standard rule-of-thumb which works into 11 trips per home for a single day: the daily trip figure of 550 would be split with the ten homes on that north side totaling 110 trips, and the remaining 40 homes going the other way would total 440 trips.

Commissioner Balch asked staff to display the slide on the Scenario 3 traffic where the road connected.

Chair Allen stated that at the meeting where the Commission was reviewing the EIR, staff had indicated that traffic would be greater without a cul-de-sac in that area because the assumption was people would be going both ways and there might be commuters outside of the project area that would be using this route. She asked Mr. Tassano if she was reading this correctly.

Mr. Tassano replied that the Scenario 3 traffic did not go into that level of detail. He indicated that what Chair Allen is recalling is his added input, which was not actually in the report. He clarified that staff put exactly what was in the report but that his item of concern was that it could potentially be different than this distribution or greater, depending on what sort of cut-through routes were desirable from the residents who live there.

Commissioner Balch inquired where the 550 trips were in Scenario 3 or if that number had changed.

Mr. Tassano replied that 500 trips is a standard one that staff would normally use just because it is an easy number to use: 50 homes/500 trips. He explained that the Institute of Traffic Engineers (ITE) actually produces that number, but it also has an equation which more closely resembles the line of actual trip distribution. He stated that he did not like to use that just because the difference between 10 and 11 trips is minor, and when it goes down to 10.2 trips, the numbers change with so many scenarios like this, and it becomes a little more difficult to explain. He clarified that the number is normally 500 trips, and this report has 550 trips.

Commissioner Balch inquired what the true number is.

Mr. Tassano replied that it is somewhere between 500 and 550.

Commissioner Piper referred to the agreement with Ventana Hills and the City Attorney's determination that it is not legally binding with the City and the private property owner and stated that she understands why it would not be legally binding with the property owners because they were not a party to that. She inquired why it would not be legally binding with the City if the City was the one that wrote and determined it.

Mr. Dolan replied that this was a private agreement that was required between two private parties and that the City was not a party to it.

Commissioner Piper stated that it sounded from Mr. Dolan's presentation that the City sort of adopted that.

Mr. Dolan replied that this happened long, long ago and that he does not know what the dialogue actually was. He noted that the City wanted it to happen; there was a condition of approval on the Bonde Ranch approval that made reference to it and so the City was clearly aware of its contents. He added that there was then this private agreement between two parties, which does not legally bind the owners of Lund Ranch because it is a different piece of property. He pointed out that the case in point now is just the matter of if the City is still committed to the idea that it was committed to then.

Chair Allen noted that even though the fact is that the private agreement is not legally binding on the City, the City did adopt specific plans and made assumptions in the City's traffic model that uses the General Plan. She inquired if that could be changed over time and if the assumption made regarding Sunset Creek Lane is legally binding in terms of the private agreement.

Mr. Dolan said yes. He added that there have been plans that have been adopted that follow the thinking of that agreement.

Commissioner Balch stated that he just compared the math on the traffic between staff's Option 3 recommendation based on the description of the 10/40 split and Scenario 3 of the EIR, and the numbers are not very different. He inquired if there was a reason why Scenario 3 in the EIR is not being recommended.

Mr. Dolan replied that staff's impression was that Scenario 3 of the EIR gives people a choice, so it is an estimate regarding which way they'll go; and Option 3 makes sure people will go one way, and staff felt that the assurance of dictating precisely where traffic would go would be better accepted.

Commissioner Balch inquired if City services, for example, trash, to be provided to the new neighborhood were considered within that recommendation.

Mr. Dolan replied that there is no question that it is not ideal for those things. He explained that both those neighborhoods right now are not connected, and in some ways, it would not be any worse because if one wanted to go from Lund Ranch Road right now over to Sycamore Creek Way, one would have to go all the way back to Raley's on Sunol Boulevard and then go back around.

THE PUBLIC HEARING WAS OPENED.

Mike Meyer, President of Greenbriar Homes Communities, Applicant, stated that Greenbriar has built six high-quality communities in town in the past and has made many contributions, including the 320-acre community park on the Bernal Property which he is delighted to see has now been improved and looks great. He indicated that tonight, he is before the Commission to talk about a new community; Lund Ranch. He noted that they basically have worked very hard with their community outreach to respond to people's comments that they wanted maximum open space and minimum development. He stated that Greenbriar wants pre-determined house sizes; it wants respect for the hillside ordinance, and it wants quality homes that fit into the larger community. He noted that they have been very environmentally sensitive: they have a

small footprint, they have public trails, they are building on the flattest portion of the property, and the EIR states that their alternative, Scenario 1, is the environmentally superior alternative.

Mr. Meyer thanked staff and the Commission for their work in defining the key concepts here regarding slopes, the ridge, and setbacks. He indicated that Greenbriar agrees with those concepts and hopes the Planning Commission will agree as well. He then made some comments on a couple of issues:

1. Artificial slope. Past Planning Commissions and City Councils have been consistent in saying that they should go back to natural slopes, and as long as those natural slopes are less than 25 percent, they should be allowed to include them in the community. He indicated that, in effect, Option 1 is the alternative they support.
2. Ventana Hills agreement. As Mr. Dolan earlier stated, the City Attorney has indicated that this is not legally enforceable, and Greenbriar was not a party to any of these agreements about Lund Ranch. The Bonde Ranch approval was made in 1991. At the same time, Shea Homes was conceptually designing a plan for 150 homes on the Lund Ranch location which would require two accesses. Now, many years later, Greenbriar is down to 50 homes with only one access, which avoids any significant traffic or circulation impacts. Then, in 1992, the North Sycamore Specific Plan was done, and Lund Ranch was not a part of it either. Finally, in 2008, Measures PP and QQ were passed, the point of which is that the electorate intended to protect the integrity of the hillsides.

Mr. Meyer stated that he cannot understand why controversy over Measure PP is being invited over a road that is not necessary. He commended staff for laying out three options as to this road consideration, and one of those options, Option 1 is to maintain this trail, which is their plan. He noted that Options 2 and 3 are to build the foot of this road which is about four football fields long. He asked Rick Hopkins, the project's biologist from Live Oak Associates, to discuss the impact of this additional road.

Rick Hopkins, Ph.D., Principal and Senior Conservation Biologist/Ecologist at Live Oak Associates, Inc. in San Jose, stated that he has been providing ecological services on various iterations of the Lund Ranch projects since the year 2000. He indicated that during this time, they have evaluated a number of project designs, all of which have one thing in common: each new iteration worked to reduce impacts to sensitive and regulated biological resources. He pointed out that Option 1 is the most environmentally sensitive plan developed for this project and greatly reduces impacts as compared to previous designs. He noted that a key benefit of this effort to shrink the effect on sensitive and regulated biological resources is that the project proponent has substantially simplified the permanent need for the Corps of Engineers, the Regional Board and the California Department of Fish and Wildlife. He explained that Option 3 not only results in greater impacts that, by themselves are not trivial but additive to the efforts of the proposed project, but also risks compromising the simplified permitting strategies by possibly exceeding regulatory thresholds that shift the permit requirements from a non-discretionary process to a discretionary one that will require substantially more analysis to justify and mitigate. He added that the permitting uncertainties that

Option 3 creates also results in extensive earthwork and a loss of 37 additional trees, 23 of which are heritage, complicates analysis of setback and slope as related to Measure PP, increases impacts to habitats considered suitable for endangered species, and increases the risk of road mortality of wildlife, thereby increasing the project effects on wildlife movements.

Mr. Meyer reiterated that Option 1, the environmentally superior alternative according to the EIR, is their choice. He pointed out that Option 2 is an unusual alternative that ignored Lund Ranch entirely and has all the traffic coming off of Sunset Creek Lane. Option 3 splits the project and, in effect, has to be built with environmental problems; it does not serve all of the households, but only part of the community while another part of the community goes off of Lund Ranch Road. He stated that one of the underlying problems of this is that it does not create one community like Bridal Creek or Ventana Hills or any of the other projects in the neighborhood. He urged the Commission to approve Option 1, the environmentally superior alternative; Option 1.

Chair Allen stated that she has seen many faces in the audience from previous meetings and noted that they all got an applause from the Commission at the previous meeting for being so respectful given such a sensitive discussion. She indicated that she would really appreciate courtesy tonight, and if members of the audience who wish to speak hear something someone else has mentioned that they totally agree, it would be fine to get up and say that they totally agree with that person, and the Commission is good with that and understands what is being said. She then requested that there be no clapping or booing.

Tim Chu stated that he is a ten-year resident of Pleasanton and thanked the Commission and staff for their service to the community and the long hours they have devoted to the matter. He indicated that this matter is truly about the broader Pleasanton community, although the context may appear to be an isolated neighborhood-vs.-neighborhood issue which, in and of itself, is very unfortunate. He noted that the Commission's decisions and recommendations will have far broader implications for the community because Measure PP is being tested and precedent is being established. He added that contrary to certain staff comments made at the February meeting, casting doubt that Measure PP would ever be implicated again in the future, that the Measure PP issues at hand are one off, his understanding is that, in fact, there are seven or eight other properties that would be impacted by the precedent set by the application of Measure PP to the Lund Ranch development. He noted that this project is at the tip of the sword in putting Measure PP to its first meaningful test. He pointed out that the will of the Pleasanton voters was made clear by the passage of Measure PP several years ago: the people do not want structures built on hillsides with a 25-percent or greater grade; roads are structures and there is overwhelming evidence to support that.

Mr. Chu stated that staff mentioned today that Measure PP does not consider roads as structures because roads are necessary to implement their recommendation. He indicated that he does not think that is a good enough justification, that people need to look at the facts and the law, that people need to look at how a court would interpret Measure PP. He added that retaining walls are also structures, and retaining walls would be required if staff's recommendation is implemented. He asked the Commission

to take care and not to make a recommendation to the City Council that will violate the law and cause the City to wade into the time-consuming and expensive waters of litigation. He added that if no agreement is reached regarding the interpretation of Measure PP, there is a system set up through the courts that will help with that interpretation. He emphasized that Measure PP needs to be defended for the good of the community and urged the Commission to look at the facts, look at the law, ignore anecdotes and unsupported statements or emotional appeals, review the ample materials before it, and make a truly informed decision without blindly following City staff recommendations.

John Spotorno reiterated an email he sent earlier this week to the Planning Division about how the Spotorno Ranch shares approximately 7/10 of a mile of fence between this project and their property, and hopes they can work out the fencing details between the two properties through an agreement to secure their continued operation of the rangeland that abuts a residential project such as this.

James Frost commented on staff's presentation that if a road is not a structure, he is confused as to how it can be subject to the structural defects that staff indicated could possibly happen, that it would seem to him then that a road is a structure by definition. He noted that at the last meeting, he made a very impassioned plea that Measure PP be recognized and accept the road as a structure.

Mr. Frost stated that at the last meeting, a Commissioner provided a Wikipedia definition of a structure with the conclusion that a road is not a structure. He indicated that he was an engineer, highly educated, who has been in the high-tech biotech industry for 35 years doing all kinds of clever projects and working on a forensics DNA project here in Pleasanton as a consultant. Mr. Frost stated that he is not a consultant; he operates a winery in the Napa Valley and runs all the engineering projects there, and is right now spending \$500,000 for replacing their septic system with a live axe septic system, so he is very familiar with engineering. He stated that he took the Wikipedia definition to three engineers whom he really respects and asked them if they have a fundamental or rudimentary understanding of what it takes to build a road, and if a road is a structure. He indicated that the three engineers answered yes to both questions, and that would make it 4-to-1 against the Commissioner.

Mr. Frost stated that he should probably not have used the word "build" because "build" automatically infers that doing a structure. He noted that the word "construct" goes right down the same path again as both the words "structure" and "construct" come from the Latin "structura." He concluded that he would then come back to this same thing that to have a structural defect, there must be a structure. He indicated that if one does not support Measure PP and accept that a road is a structure by definition, then this is going to lead down a very bad path for the community. He emphasized that the community should not go there; people should stand up and say that a road is a structure, and therefore, a road cannot be built.

Bill Spain stated that he is a 26-year Pleasanton resident, referred to Mr. Dolan's statement that there was a private agreement between Ventana Hills and Bonde Ranch. He indicated that it was not a private agreement, that Brian Swift, Planning Director at that time, worked very closely on it, and that they had the opportunity to have that

agreement reviewed by outside legal counsel. He added that the Ventana Hills residents do not share the opinion that the agreement is private, and it is not necessarily exclusive to the discussions with Bonde Ranch.

Mr. Spain stated that he supports Option 2 as it is consistent with previous agreements supported by surrounding neighborhoods. He noted that they have made that clear in previous attempts to define their position in front of the Planning Commission. He added, however, that he understands and accepts Option 3 as a suitable alternative.

With respect to traffic, Mr. Frost stated that he did not see any reference to construction traffic in the staff report. He indicated that it is his position that construction traffic for the homes being connected to Sycamore Heights and Bridal Creek should be routed through those neighborhoods since this was also addressed in their CC&R's, and only the construction traffic associated with ten or fewer homes being built in a cul-de-sac at the end of Lund Ranch Road should be routed through Ventana Hills and Mission Park. He stated that they would like to have the construction traffic recommendations added to the developer's agreement and conditions of approval.

John Bauer handed the Commissioners a document and thanked them for their public service. He stated that Measure PP, Save Pleasanton's Hills, and the housing cap has already been litigated, and a precedent has been set; the housing cap has been thrown out and has been ruled unconstitutional by the California Supreme Court, so the housing cap of Measure PP is gone.

Mr. Bauer stated that there is a property on very steep hillsides in South Vineyard, the 15-unit Chrisman property, that just recently had its Final Map approved. He indicated that when the development agreement came off for extension in 2009, Measure PP was contemplated, and in the Minutes of the contemplation and in the precedent that was set, they acknowledged that it was on very steep hillsides, that exception was given to the Chrisman Ranch to build over existing roads, and that they had to extend beyond those existing roads and encroach upon slopes greater than 25 percent for the whole project to happen; and that was acceptable. He indicated that the document he handed to the Commission is Figure 4.1-3, page 70 of the EIR. He noted that the two red boxes on the document are what are being contemplated here as far as steep grades; and the area that will be crossed is less than the size of the seating area in the room. He pointed out that the small green line going from the top of the ridge down is a road; there is an existing road coming down right across the middle of that grade from the ridge down, and there is also a road on the top of that ridge around two water tanks. He stated that this hillside can be exempt from Measure PP; it has already been graded, and that existing dirt road can be graded all the way up to access Sunset Creek Lane and the Bridle Creek roadway system, as was contemplated in the previous sessions.

Mr. Bauer then stated that he wanted to talk about disclosures because in 2003 when this first hit the public in a limited amount of time, there was community outrage about disclosures, mainly from the Bridle Creek community that had settled in then. He acknowledged receipt of the Sycamore Heights and Greenbriar CC&Rs in response to his request, and it is very plainly stated in the Bridle Creek CC&Rs that the road will connect through the development. He added that there is a lot of ambiguity in the Sycamore Heights CC&Rs, but he recalls that Sunset Creek Lane may connect to the

Lund Ranch development. He asked where the connection would be if it was not going to connect to Sunset Creek Lane.

David Melaugh stated that he will focus his comments on the road structure issue. He indicated that he wrote to the Commission on June 14, 2015 and June 23, 2015 discussing in detail that a road is indeed a structure. He further indicated that he is an attorney and that what he will talk about this evening is a question of statutory interpretation.

Mr. Melaugh stated that the Pleasanton Municipal Code is what is being interpreted, and at issue is the definition of a structure, which the Code says is "anything constructed or erected which requires a location on the ground." He indicated that the question is if a road fits that definition, but what needs to be addressed first is whether the definition language is ambiguous, and it is not. He stated that if one asks a spouse or the next person on the street if the road is something constructed and requires a location on the ground, he doubts if there will be even one person who will say "no." The Oxford English Dictionary's definition of "construct" is "to build or erect something, typically a building, road, or machine." He indicated that he did not insert the word "road" in that definition; that is Oxford's definition. He added that the clarity of Pleasanton's Municipal Code definition should end this debate with respect.

Mr. Melaugh stated that the aim here is to apply Pleasanton law, and if one is getting legal advice that there is some ambiguity or room for interpretation in this Code, one is getting bad advice. He noted, however, that if, for argument's sake, there is some ambiguity and it is necessary to turn to other sources for interpretation, there are many communities that explicitly define roads as structures: the California State Government Code is one example, as is Fremont. He added that other there are plenty of places with broad definitions like Pleasanton's that list roads as an example of a type of structure: Orinda, Alameda, and Lafayette are cities that do just that. He pointed out that even Pleasanton does this in another section of hillside ordinances which says: "Streets, buildings, and other man-made structures," the implication being that a street is a type of man-made structure. He stated that staff says that these other communities have separate definitions of road and structure, and, therefore, a road must not be a structure. He stated that the mere fact that there are separate definitions says nothing about what is in those definitions; the words "fruit," "dog," and "strawberry" each have separate definitions in the dictionary, and that does not say whether a dog is a type of fruit or that strawberry is a type of fruit. He indicated that one needs to look at the definitions themselves for the answers.

Mr. Melaugh stated that he has reviewed the codes of over 30 other municipalities, and with the exception of San Ramon, not one of them defines road as not a structure, as something outside a structure. He indicated that San Ramon's code says that when code authors want to exclude road from structure, they can do so. He noted that Pleasanton has not done that, but instead has chosen a definition of structure that any reasonable person would agree includes roads. He asked the Commission to act reasonably, act within the boundaries of the law, and approve Option 1.

Jim Berson stated that he has had interaction with Greenbriar Homes over the years, and that in these dealings with, its representatives take environmental issues very

seriously. He indicated that California residents are very environmentally sensitive, and Option 1 is the more environmentally sensitive scenario.

Andy Allbritten stated that he moved to Pleasanton in 1988 and is a member of the Ventana Hills Steering Committee since 1991, noting that the Committee has consistently and tirelessly worked with the City, the Planning Commission, the Council, and developers to try to make sure that the traffic that goes to Ventana Hills and the Mission Hills neighborhood is reasonable. He stated that Pleasanton is a community of character, and commitments that have been made in the community are important.

Mr. Allbritten stated that one of the interesting things in the connection of Lund Ranch Road and Sycamore Creek Way is that everybody has to go to Raley's on Sunol Boulevard. He added that a lot of people go to Pleasanton Middle School and Hearst Elementary to drop off their children and then go back home; and they go to the park on Junipero Street to play. He stated that putting more traffic on that route is not a good thing. He indicated that he personally would not like any traffic to go through Ventana Hills, but he thinks staff has done a good job with Option 3 and he could support that. He noted that back when they negotiated with the Bonde Ranch developers, they spent 11 hours face to face, and both they and the developers came away with not everything they wanted, but it was a reasonable plan that reasonable people could agree on. He asked the Commissioners to be reasonable in dealing with this project.

Phyllis Lee stated that she has lived in Pleasanton since 2002 and that she is very fortunate to be here today in one piece because living right on Sycamore Creek Way by the bend is very dangerous as cars speed down that road. She noted that living in the Bridle Creek community of about 111 homes has fostered a sense of bonding with multiple friends and hopes that the Commission would consider keeping that community intact with the 50 new homes. She asked the Commission to consider the safety issues connected with Options 2 and 3 and to go with Option 1, the environmentally superior option.

Allen Roberts stated that he is present tonight to plea with the Commission not to weaken Measure PP with a vote to approve staff's definition of slopes and ridges on this project. He indicated that Measure PP was passed by the voters in 2008 as a statement to preserve the City's ridges and hills. He noted that Measure PP is a response to inaction by Pleasanton City government, and how he sees the same government trying to undermine the will of the people by re-defining the terms of what Measure PP meant. He pointed out that staff is telling the developer of this project to ignore the 25-percent slope restrictions with a pretense of man-made slopes, but in that process included areas of natural slopes greater than 25 percent in the process. He stated that with respect to the graphic that was shown, what was shown on the slope map where the olive trees are is greater than 25 percent. He added that ridges like the one leading to Lot 32 are being ignored and proposing that structures clearly defined in California building codes can be constructed on hillsides.

Mr. Roberts stated that while the Lund Ranch decisions are bad, much more troubling is the implication that these proposed definitions will have on future projects which make Measure PP less effective at ridge and hillside preservation, and all of Pleasanton will have to live with the impacts. He noted that the definition of slope as proposed by staff

requires discretion about which slopes are developable because it is not a workable definition. He added that with this project, that discretion can and probably will lead to construction proposals contrary to what the voters wanted. He indicated that staff decided where the ridges were in this project and then proposed definitions to limit their end points. He further indicated that these decisions were not made as part of a public process but instead were communicated directly to the developer who invested a lot of time and money before the public even got a chance to weigh in.

Mr. Roberts stated that at the February 2015 Work Session, the Commission asked a very astute question: "What definitions are other agencies using?" and the answer is that no agency is using the definition of slopes staff is proposing – not locally, not in California, not any place. He noted that for ridges, other agencies do not decide in the back room with the developer; instead, they map the ridges in a public process and use that to guide where they develop. He added that for structures, San Ramon and Dublin both have definitions similar to Pleasanton's: structures are anything built on the ground or attached to the ground.

Mr. Roberts stated that if the Commission decides to have access to this project through Sunset Creek Lane, it should ask the voters to weigh in as to whether or not they want an exception to Measure PP rather than somehow explain away that roads are not structures, and, therefore, retaining walls, which are structures in the California Building Codes, are somehow not structures as well. He pointed out that that logic is crazy, and the next step would be a house and a retaining wall, which is part of a road, are not structures either. He stated that Pleasanton has spoken loudly and clearly, all 20,000 of them when approving Measure PP, and asked the Commissioners not to marginalize their input tonight. He asked that they do not decide to undercut Measure PP by rationalizing that definitions will get fixed in the next project. He indicated that the time to fix it is now.

Yongjian Su stated that he agrees totally with Option 1 and that Options 2 and 3 basically violate Measure PP. He further stated that he agrees with the earlier speaker that a road is a structure, no matter how it is interpreted, and as clearly defined in the dictionary as well as by other cities.

Carolyn Lincoln read the following letter from the San Francisco Bay Chapter of the Sierra Club into the record:

Honorable Mayor and Members of City Council and Members of the Planning Commission,

In past recent weeks, the environmental impact report was released for Lund Ranch II. It contained the results of a review of a number of options for the construction of a modest number of homes and an access road. The Sierra Club's local chapter, (which includes Pleasanton) has had members perform the review of this EIR, and they concur with the report's findings, and with the developer, that the Lund Ranch Road access is the preferred environmental approach to minimize impacts and avoid construction on high sloping ground.

However, it has come to our attention that the City of Pleasanton administration is proposing to overrule, and deviate from, the EIR and attempt to push a second road through the steep-sloped ground. This additional road is not the environmentally preferred solution, and it will also likely to run afoul of the Measure PP, which voters approved for the purpose of preventing the environmental damage and steep-sloped terrain.

It is therefore our earnest request that the City administrators use the EIR as the impartial planning tool and implement the EIR's preferred project configuration with the lower impact road that does not violate Measure PP.

Sincerely,

*Rebecca Evans, Chapter Chair
Sierra Club San Francisco Bay Chapter.*

Ms. Lincoln then asked the people in the audience to raise their hand if they support the content of the letter.

Vicki LaBarge stated that she will speak about environmental impact versus human impact. She indicated that she has lived on Junipero Street for 30 years and has raised a family on Junipero Street before it connected to Sunol Boulevard, before there was any Ventana Hills, and she has seen traffic increase over the years. She stated that she has been in communication with Mike Tassano about the traffic problem on Junipero Street and that she is in a way representing a number of people on Junipero Street because she is also the Neighborhood Watch Captain. She further stated that she was told by staff that there is no money for traffic-calming measures on Junipero Street, that Junipero Street is No. 9 on the list for traffic-calming measures, and Sycamore Creek Way, Sunset Creek Lane, and Bridle Creek are not even on that list.

Ms. LaBarge stated that in addition to the traffic that might be coming down from the new Lund Ranch development, there is also the high-density complex that is going in at Bernal Avenue and Stanley Boulevard, which will add much more cut-through traffic on Junipero Street and Independence Drive by people trying to get home through Bernal Avenue and do not want to sit on Sunol Boulevard. She asked how much more traffic is too much for Junipero Street. She pointed out that Option 1 is evidently cheaper for the builder: there is no extra grading; there is nothing that has to happen. She asked if that is the right thing to do for the people living on Junipero Street. She reiterated that it is not right to send all of that traffic down their street. She stated that she is willing to take that compromise and encouraged the Commission to look closely at Option 3.

Bill Lincoln stated that he and his wife were attracted to Pleasanton ten years ago by the historic Main Street, the small town feel, and the beautiful hills and open space. He indicated that they actively campaigned for Measure PP a few years later and were thrilled that those hills and ridges would be preserved after thousands of Pleasanton citizens voted for it and overwhelmingly passed it. He stated that now, Lund Ranch II has brought with it issues that have pitted two neighborhoods against each other: entry and exit road options, traffic impact, environmental impact, and previous builder and Councilmember discussions, promises, and giveaways. He stated that these issues

can probably be discussed and debated *ad infinitum*; however, these issues are resolved for all concerned by one thing, and that is Measure PP, which is the law and is the will of the people of Pleasanton. He indicated that Measure PP trumps everything else and must be followed, and any deviation, exception, or amendment to its principles and provisions must only be decided by Pleasanton residents.

Mr. Lincoln stated that the Lund Ranch II developer has adhered to Measure PP by reducing the number of homes to be built from 150 to 50 and has planned for Lund Ranch Road to be the entry and exit point. He further stated that the neutral EIR has determined that the Lund Ranch Road access has the least environmental impact and is the environmentally superior alternative for project entry and exit; any option other than Lund Ranch Road compromises the intent of Measure PP, violates the law, and establishes a precedent for other developers to use to circumvent the Initiative that the people passed in 2008.

Mr. Lincoln stated that in his mind, the use of Lund Ranch Road for project access is a no-brainer. He told the Commission that its decision and recommendation to the City Council will have far-reaching consequences and will set a precedent for other hillside areas throughout Pleasanton. He noted that it may well be the most important decision that they, as Commissioners, will make. He added that the people have faith that the Commission will do the right thing for all citizens of Pleasanton by sending the Council a unanimous recommendation to use Lund Ranch Road for the developer's project. He asked the audience for a show of hands in support of his comments.

Carol Spain stated that her husband, Bill, and she have lived in Ventana hills since 1989 and that she has been a member of the Ventana Hills Steering Committee since its inception in 1991. She noted that the Ventana Hills Steering Committee and Mission Park representatives had sent the Commission a letter, dated June 23, 2015, providing comments relative to the staff report for this meeting. She noted that for more than 20 years, Planning has supported routing the road connections for the Lund Ranch project through Bridle Creek and Sycamore Heights, and he does not believe there is any justification to dismiss more than two decades of thoughtful and collaborative planning between the City and the community. He added that the CC&R's for both of these neighborhoods note the future development possibility to the east, including specifically the Lund Ranch II property and the road connections to that development. He noted that the CC&R's are a public record that are part of the closing documents homeowners must sign-off on prior to purchasing their home.

Ms. Spain stated that Option 1, which proposes putting the entire increase in traffic from the Lund Ranch II development through Ventana Hills and Mission Park neighborhoods, is not fair or reasonable. She indicated that she does not want to see any neighborhood burdened with traffic, and she does not believe that building in the community can be stopped. She stated that the road connection from Lund Ranch II to Sunset Creek Lane is no different from many roads already established in Pleasanton: it will not stand out, it will not be on a ridge, and it can be developed into the natural topography in a way that is consistent with other roads in the City. She added that it would be unfair to overburden any single neighborhood with already existing high traffic volumes, specifically their Mission Park neighbors on Junipero Street. She noted that putting the majority of the Lund Ranch II development traffic through the Bridle Creek and

Sycamore Heights neighborhood is the right decision, especially given the numerous agreements and plans that are part of the public record.

Ms. Spain stated that some will argue tonight that the road through Bridle Creek and Sycamore Heights should not be built because of Measure PP, and that the people of Pleasanton who voted for Measure PP do not support this road. She noted that this is not necessarily true because she is one of the many people who voted for Measure PP, and she does, in fact, support this new connector road. She added that she would argue that Measure PP was not intended to include roads, and her position is confirmed and documented in City records when the proponents of Measure PP addressed the issue of roads on several occasions prior to the passing of Measure PP in November.

Ms. Spain stated that the City's goal has always been to keep the flow of traffic reasonable for all neighborhoods. She indicated that although Option 2 is in line with previous agreements and understandings and would be their preference, she agrees with staff that Option 3 best balances the previous commitments made by the City, the plans previously adopted by the City, and the concerns of affected neighborhoods. She stated that Option 3 is an acceptable compromise, provided the cul-de-sac at the end of Lund Ranch Road contains ten homes or preferably less. She concluded by saying that she would like to have the construction traffic recommendations previously noted by Bill Spain be added to the developer's agreements and conditions of approval.

Shareef Mandavi, a Pleasanton resident for 22 years, stated that he has been listening to the commentary from the neighbors in Ventana Hills and that he has known people who live there and have moved there partly because they were told that there is an agreement with the City that no traffic will be coming through this neighborhood. He noted, however, that over the past few months, it has been mentioned in hearings that such an agreement never existed. He agreed that there might have been numerous discussions about it, but that was an agreement with a builder and not with the City, and that agreement is not a legally binding agreement and has now become an urban myth that is continuing to be propagated this evening.

Mr. Mandavi stated that he believes when Ventana Hills saw there were some holes in that line of thinking, they moved to this road/structure issue. He indicated that he is seeking transparency in City government, less opacity and fewer back room deals of any kind. He noted that he was part of that group in 2003 that was angry because it did not get proper disclosure for Bridle Creek. He added that there was a lack of transparency, and questions were not answered forthrightly. He stated that he agrees with the earlier speakers who recommended that the Commission go by the rule of law and not be swayed by emotion. He further stated that while he feels bad for any neighborhood that has to take traffic, he thinks that what the greater community has asked for has already been decided in earlier elections and by Measure PP.

Greg Wohlenberg thanked the Commissioners for their service to this community. He stated that he and his wife moved to Sycamore Heights in 2009 due to the beauty and proximity to the City's many wonderful assets. He added that they were also thrilled to learn that Measure PP had been previously passed, and they were assured of the long-term preservation of Pleasanton's ridgelines and hillsides.

Mr. Wohlenberg stated that at this point, they are very disappointed to learn that the Commission has been considering Options 2 and 3, which are in direct violation of the community's vote. He noted that such an approval would set an important precedent for future projects of this nature. He added that those options will slow the timeline for the City to realize the project and will incur additional expense for the proposed development by the applicant. He urged the Commission to support Option 1, the environmentally safe choice.

Robert Olstad stated that he is a resident of Pleasanton for about 11 years or so. He indicated that he is quite amazed at actually reading through the staff report that the City of Pleasanton has spent a fair amount of money on various reports with a lot of information on traffic and the environment; yet, those reports are being ignored and staff is coming up with just whatever kinds of recommendations.

Mr. Olstad stated that there has been a lot of good discussion on the environment and the environmental impact, but he also wanted to talk about the human impact which was mentioned earlier. He indicated that he just went out and measured street widths: Sunset Creek Lane is about 31 feet from curb to curb, the size of about 3½ parking spaces at Raley's. He stated that having a two-way traffic routed through Sunset Creek Lane, a very narrow road, is a safety issue, a human impact issue; and when two cars are parked on the street, it becomes a single-file road for cars that are coming through. He added that the road was not designed to handle this amount of traffic.

Mr. Olstad stated that Junipero Street is about the size of 4½ parking spaces at Raley's. He noted that while there is not a lot of space in the parking stalls and it is sometimes difficult to try and open the door with a car right there, that is plenty of room for even two directions of cars proceeding and even for a bike. He indicated that he has ridden his bike on Junipero Street and feels safe; whereas on streets at Sycamore Heights, it does not feel safe to ride a bike with two cars parked on the street and one car coming through. She asked the Commission to adopt the option where the traffic is going through Lund Ranch Road as it is the safer route and probably has the least human impact from a safety standpoint.

Commissioner Balch asked Mr. Olstad if parking is actually allowed on Sycamore Creek Lane or if there is no parking allowed on it.

Mr. Olstad replied that parking is allowed. He stated that Sunset Creek Lane is actually the road that will funnel the traffic initially from the development.

Commissioner Balch stated that he was out on that street this morning and saw an illegally parked car. He indicated that he did not see any spot along the road where parking was allowed, and asked Mr. Olstad if it would be farther up along the road

Mr. Olstad replied that parking is allowed on both sides, on the entire length of the street. He added that Commissioner Balch may be referring to Sycamore Creek Way, which has bike lanes on each side and basically no parking is allowed on that street.

Kay Ayala stated that she is particularly passionate about this subject because she sat on the City Council with the approval of the Bridle Creek and Sycamore Heights housing

developments, and she was a signatory on Measure PP. She referred to Ms. LaBarge's comment that she lived in the area before Raley's and stated that this is Bridle Creek and Sycamore Heights today: it was Junipero Street when Ms. LaBarge moved in; then a development can and more traffic with it; then a second development came and still more traffic; and still more traffic with development three.

Ms. Ayala stated that they are asking people on Bridle Creek and Sycamore Heights to take what they signed for in their CC&R's and to take the traffic that they knew was coming, that Mike Meyers of Greenbriar knew was coming when Greenbriar developed Bridle Creek. She noted that when those projects were approved, the Council sat through hours and hours with people from Ventana Hills, Bonde, Mission Hills, and Junipero, and these people have been fighting for what is law. She added that this cannot be considered law, the PUDs, the General Plans from 1996 and from 2005, everything puts the traffic through Sycamore; and there is not one document in City records that puts the traffic through Lund Ranch Road.

Ms. Ayala stated that she is passionate about this because as a signatory for Measure PP, they were in the City Manager's Office before the election and clarified it did not include roads. She noted that both the City Manager and the Councilmembers know that, and the records show that, so this discussion about roads should be non-existent. She indicated that this subject goes to the very essence of trusting government, and if citizens cannot trust previous Council commitments, then Pleasanton is not a community of character. She asked the Commission to trust its staff's conclusions that Option 3 is the best for the community.

Justin Brown stated that he knew a lot of time and effort has been put into this discussion by both the Commissioners and City staff. He indicated that he was impressed to hear that a member of the Commission actually went out and looked at the two neighborhoods. He added that he will not belabor the points about traffic, slope, and Measure PP as he has made statements on those matters before, but will talk about the options.

Mr. Brown stated that Option 1 is an unacceptable option because it ignores 20 years of planning and coordination between neighborhoods. He added that Option 2, as previously mentioned, obviously would be the most favorable for his neighborhood considering the traffic that it gets down the street. He indicated that at the end of the day, Planning and the City need to move ahead, and Option 3, as described by City staff, is preferable over the prior EIR recommendation because it clearly delineates and splits the traffic, and makes the traffic predictable. He noted that although it is some additional pain on his neighborhood, it also makes that pain predictable and measurable. Finally, he stated that, as mentioned earlier by Ms. Spain and Ms. LaBarge, Option 1 is obviously the most cost-effective for the developer; so although it is nice to hear the developer emphasize the environmental impacts, there is the obvious financial impact that it lends to them.

Chris Markle stated that he has two comments to make and will read them into the record:

My first comment relates to Measure PP. If this project is the beachhead where, by some crazy outcome, it is determined that a road is not a structure, and, therefore, PP doesn't apply to the building of a road across the hill to connect to Sunset Creek, then the City establishes a precedent that applies to some 4-6, maybe more, other properties, including Foley Ranch and the Golf Course Bypass Road. I'm pretty sure that the voters for PP, when presented with signature-gathering campaign materials describing the tops of multiple hills being lopped off to run a road into the proposed Oak Grove development, we were surely thinking of a road into that property and the buildings on the property the same way. No to any of that, and they voted for Proposition PP with those thoughts in mind. We do not want to open the floodgates of development made possible by allowing roads over hills into these other undeveloped properties. Please do not set the precedent here and, instead, approve the environmentally preferred option to route the Lund Ranch II development to the existing Lund Ranch Road.

My second comment relates to the fact that the applicant, Greenbriar, has been working with the City on this project for years—too many years. They are a business trying to develop this property on their own, the property they own in good faith. The environmentally preferred option of routing Lund Ranch II traffic out of the property onto Lund Ranch Road will permit this applicant to most quickly get back to their business of developing this land and turning it into a profitable enterprise. Any of the alternatives that traverse the creek or build a road over the hillside exposes this project to delays and risk. Traversing the creek brings the Army Corps of Engineers and apparently numerous other organizations into the mix and introduces delays related to that. Building a road and related structures over the hill to connect to Sunset Creek Lane violates Proposition PP, exposes the City to yet another potential lawsuit or set of lawsuits, and risks even more delay to this project. The applicant has waited long enough here. Vote for the environmentally preferred option and let them get on with their development. Thank you for listening to my comments and all you do to help plan for a better Pleasanton.

Greg O'Connor stated that despite prior beliefs and CC&R documents that opine that no traffic from Lund Ranch would go through Lund Ranch Road, those changed when Measure PP was passed. He indicated that that is what has been the major change here in this town: it passed a law, and it overrides the General Plan and everything else. He pointed out that Measure PP states that housing units and structures shall not be placed on slopes of 25 percent or greater, and when it says "housing units and structures," it means there are other structures besides housing units. He noted that many definitions of what a structure is have been brought up tonight, but it is obvious that a road is a structure, and it is not appropriate for staff to conclude that a road is not a structure because that conclusion supports their recommendation. He added that the signers of Measure PP did not write the hillside initiative; there are sworn affidavits from the authors of that part of Measure PP that say they clearly and openly included roads when they were writing Measure PP, and, as a matter of fact, the catalyst for all of that was the hilltop road, the mile long road in Oak Grove, and they were very clear about that when they were collecting signatures on Measure PP.

Mr. O'Connor stated that, as far as traffic is concerned, if Lund Ranch Road took all of the traffic from the Lund Ranch II development, Junipero Street would still have less

traffic than Sycamore has today. He noted, then, that if traffic is to be shared, then this is a good reason why Sycamore should not be taking more traffic. He cautioned the Commission that its decision tonight will be the precedent and will define hillside development in Pleasanton for decades to come. He asked the Commissioners to support their voters by upholding Measure PP and recommend to the Council Option 1, which is the environmentally preferred plan as proposed by the developer.

Chair Allen called for a 10-minute break at 8:51 p.m. and reconvened the regular meeting at 9:01 p.m.

Christian Seebring, Attorney for the applicant, stated that he wanted to make a few quick points:

1. All the comments made tonight were about the dispute on whether or not a road is a structure. Approving Option 1 does not make it necessary for a road to be a structure; the question does not need to be decided on tonight or by the City Council.
2. It was stated tonight that since the agreement between the two neighborhoods, there has not been a single document that has contemplated Lund Ranch Road connecting to Lund Ranch. Just a year later in the 1992 North Sycamore Specific Plan, Figure A-1 shows the cumulative scenario of the anticipated projects at that time which would be developed around this specific plan, and Lund Ranch II is there, showing 150 homes with its primary connection to Lund Ranch Road and a secondary connection to Sunset Creek Lane. It is just illustrative, and there are not 150 homes anymore.
3. When talking about the agreement between two neighborhoods, it is important to also focus in on the specific language used in the agreement which was for the developer of Bonde Ranch to use its best efforts to obtain an easement through Lund Ranch II. That did not happen under the Map Act, and off-site conditions waived out 120 days, so the agreement has been satisfied where it does not exist.
4. One thing that has not been spoken about tonight is Option 3, the connection dividing the community. It is not just a road; there is also going to be a loss of lots

Chris Kinzl, TJKM Transportation Consultants, noted that the EIR makes the point that there are no significant neighborhood impacts associated with Option 1. He indicated that, as a matter of fact, on the main streets that have been discussed tonight, the traffic would add about 26 cars in the peak hour, which would be one car every two minutes, which is hardly a major impact.

THE PUBLIC HEARING WAS CLOSED.

Chair Allen thanked everyone, on behalf of the Commission, for being so respectful. She indicated that all the Commissioners believe the same thing, that this is one of the most difficult decisions all of them will make. She noted that while she cannot speak for everyone, she thinks this is going to be her most difficult decision, and that is because

there are two competing things going on, and it is the Commission's job to make a decision.

Commissioner Balch stated that every Commissioner is evolving on the Commission, as much as the members of the audience are evolving in their arguments and positions. He agreed with Chair Allen that the most difficult decision the Commission has to make is a neighbor-versus-neighbor dispute, and this is obviously ten-fold because it is a neighborhood against other neighborhoods.

Commissioner Balch stated that what he is going to do is highlight a few questions the audience has raised that he actually would like an answer to, which would help in his decision-making process.

- 1. One of the first speakers mentioned a widening of existing roads when a project right after Measure PP or Measure QQ got passed, and it was deemed compliant with the measure. Does staff know of that project?*

Chair Allen asked it was the Chrisman property, and if the speaker is in the audience and could clarify that.

Mr. Bauer said yes. He indicated that in the 2005 Minutes that he referenced, there was a discussion on the Chrisman property regarding roads on the property that exceeded 25 percent which staff exempted from the hillside ordinances or Measure PP; grading and road construction were allowed to spread out around the road to make connections within the property.

Chair Allen asked Mr. Bauer if this was before or after Measure PP.

Mr. Bauer replied that it was recommended in 2009.

Commissioner Balch re-stated Mr. Bauer's statement that the Chrisman project roads agreement for 25 percent existed and was expanded. He asked if staff knows about this.

Mr. Dolan replied that there is a distinction between a property being exempt from Measure PP and being given an exemption from Measure PP. He stated that he did not work on the Chrisman project, but it was exempt from Measure PP.

Ms. Harryman stated that the Chrisman project pre-dated Measure PP. She noted that this project was on the Council's Agenda at its last meeting, which Mr. Bauer attended, and this discussion took place at that meeting as well. She affirmed that Measure PP was approved after the Chrisman project was first proposed and approved.

Commissioner Balch stated, for clarification purposes, that the project was fully approved and ready to break ground, and then Measure PP or Measure QQ came along; that the project was already out of the gate and it cannot be brought back.

Ms. Harryman confirmed that is correct.

2. Junipero Street is No 9 on the list of impacted roads in the City of Pleasanton. Does Mr. Tassano maintain a list and is that accurate?

Mr. Tassano replied that he does maintain a list, and a resident needs to call him to get on the list. He explained that staff reviews all the streets on the list every year and then prioritizes them based on a set of standards. He confirmed that Junipero Street is on the list.

Commissioner Balch asked Mr. Tassano to briefly explain what those standards staff considers might be.

Mr. Tassano replied that staff looks at speed, at volume, at proximity to schools and parks, at accidents, and one or two other criteria.

Mr. Dolan added that if the street makes the criteria for being high priority, then Mr. Tassano and his team meet with the neighborhood, and one of the issues is that the neighborhood has to agree on what the solutions are. He noted that the neighborhood does not always agree, and sometimes something does not happen because there is no agreement.

Mr. Tassano stated that the City actually had a traffic-calming program enacted on Junipero Street, although it pre-dated some of the nice tools the City now has like speed bumps and radar speed signs. He noted that staff and the neighborhood did not really reach agreement on what to implement, and the neighborhood contacted him again, and staff came back and they reached agreement.

Mr. Dolan stated that it is also important to point out that as a condition of project approval, knowing that it was pointed out that our traffic-calming program is under-funded, there is a condition that has been applied to this project where they would have to contribute towards the traffic-calming with the idea that, depending on which option is selected, some of those funds could be used to supplement projects in these two affected neighborhoods.

Commissioner Nagler inquired, for clarification purposes, if the residents of Junipero Street or the neighborhood would support implementing traffic-calming measures in the neighborhood today if the funding existed.

Mr. Tassano replied that he did not know and that it would take a petition. He explained that some of the difficulty lies in the fact that people are not in support if the tool were placed in front of their home. He stated that if a resident does not want the traffic-calming measure in front of his/her home, then staff will go to the neighbor's house; and if they do not like it, staff will keep moving down; and if staff cannot find a suitable location, then staff concludes that it probably is not a big enough issue.

Commissioner Nagler asked Mr. Tassano if he has had a conversation with that neighborhood recently to give him any sense of whether they would support the measure.

Mr. Tassano replied that was correct.

- 3. The question of road width has come up, and Commissioner Balch stated that it is his understanding that there is a point where Junipero Street becomes a wider road. He added that he saw a lot of "No Parking" signs up on the other road being violated by a lot of landscapers yesterday and today.*

Mr. Tassano replied that staff has had this question on numerous occasions, so Traffic Engineering staff went out and measured each of those locations. He then presented some slides showing the roadway widths: 40 feet through Junipero Street as well as on Independence Drive, all the way down to Lund Ranch Road. He noted that Sycamore Creek Way was designed wider and has the bike lanes, with no parking on one side. He added that he believes there is no parking on either side closer down all the way by Sunol Boulevard, and that there are no other restrictions in the rest of that neighborhood.

Mr. Tassano stated that 32 feet is a roadway width staff uses when there are under 1,000 vehicles per day. He noted that there are roadways that are 30 feet wide with parking on both sides, for example, Pleasanton Avenue, but the volume is such that if there happens to be a car coming in the opposite direction, the other car either yields or slides by.

Commissioner Balch inquired if, under Option 3, gaining approximately 180 trips on Sunset Creek Lane and 260 on Sycamore Creek Way, a 32-foot road width statement would exceed the 1,000 trips.

Mr. Tassano said no. He stated that the current volume on the end is 100 trips, and Hanifen Way is 130. He noted that the volume increases as more vehicles come onto the roadway because there are more homes. He added that the highest volume count that staff had in the traffic report was about 580 closer to the end of the residential street, so adding traffic there on that distribution would bring it closer to that 1,000.

Commissioner Balch inquired if that would be at the larger width.

Mr. Tassano said yes.

Commissioner Balch noted that Junipero Street seems to be already at 2,800 trips a day, based on the report.

Mr. Tassano replied that it varies: the volume is lower closer to the park, and increases to around 4,200 by Raley's.

- 4. One of the speakers talked about retaining walls not being structures, but the Municipal Code states that a retaining wall over six feet was deemed a structure. Could staff confirm if that is correct?*

Mr. Dolan read from the Municipal Code: *"Structure means anything constructed or erected which requires a location on the ground... not including a fence or a wall used as a fence if the height does not exceed six feet, or access drives or walks."* He cautioned the rush to go to some particular definition in the Municipal Code that

supports one's position because there are other sections people could look at that could support a different position, and if Measure PP was meant to reference a specific condition or State law, it could be argued that it should have said so. He explained that basically, because it is ambiguous on these topics, the City's legal advisors are stating that the City has the option to interpret it, and the Commissioners can use all these things and whatever helps them to come to their decision, but they are not obligated to stick with one of those definitions. He added that they can use common sense however they want to interpret it.

Mr. Dolan stated that there is also the practice, and there is another part of the Municipal Code that talks about what size a retaining wall requires engineering, and basically, that part of the Code says that if it is four feet from the bottom of the footing to the top of the wall, then it needs to be engineered and usually that would mean a three foot high wall. He indicated that there are different definitions that can be used to get to what the solution is on the retaining walls. He added that if the concern is the visual impact, the solution could be a series of retaining walls instead of a larger one. He indicated that the road could be built without retaining walls, but it would probably have to be graded from the bottom of the hill all the way to the top.

5. *If the Bridle Creek and Sycamore Heights neighborhoods came back now with Measure PP in effect, would they have been approved in their current form, or would they have the slope and elements restricted?*

Mr. Dolan stated that he did not ever see that area before it was developed, but it would be hard to imagine that any neighborhood in the Southeast Hills could be built like it is now if Measure PP had been in effect. He clarified that he is not saying they would not be there but that they would be pretty dramatically different.

6. *There was a comment about splitting the construction traffic: the 10 homes versus the 40 homes. Do you see that being a plausible option?*

Mr. Dolan replied that it could be done but it would require that the hillside road be built before any homes are built, as well as approvals from all the various agencies for construction crossing the creek before the project could go forward. He added that it would be complex, and staff has not really evaluated that but it is something staff can definitely consider. He indicated that it would be inconvenient but not undoable.

Chair Allen stated that she knows the staff report does not include a visual of what the road would look like constructed because it has not been designed yet, but asked what staff expected the height of retaining walls would be on the section that crosses the 25 percent or greater slope.

Mr. Dolan replied that it is almost impossible to answer that question as staff has not really done the evaluation on the exact part that crosses 25 percent because there is not a whole bunch of it that is 25 percent. He stated that what he does see, if there were retaining walls, would be one retaining wall below at a minimum and one above the road, and obviously they would be as short as possible. He added that if more were required, staff would bench it up and split something up, perhaps two below and two above at the maximum but limited to three or four feet.

Chair Allen inquired if there is any way to get a road connecting from Sunset Creek Lane into the Lund property without crossing this 25-percent slope.

Mr. Dolan said no. He stated that one could argue that it is not a huge area of 25 percent, and the way the staff report is written, it suggests kind of between the lines that there is another way of concluding you can make that access. He noted that theoretically, the City could conclude interpreting Measure PP that there is not enough 25-percent slope here to be concerned about, but technically the road would go through an area of 25 percent.

Commissioner Balch inquired if staff has a rough idea of what percent of the area is not 25 percent. He noted that it is a little different at the top than at the bottom.

Mr. Dolan replied that it varies all the way up to 24 percent and down to something that is much more gentle. He indicated that staff has not really done that analysis; staff just drew the line and said this is over the threshold and this is not.

Chair Allen referred to a comment made by a speaker and which she read in the previous Planning Commission's deliberation when the Commission was asked to look at if a road is a structure or not, that a voter Initiative such as Measure PP would trump the General Plan, no matter what the history was and what kind of specific plans and traffic model assumptions exist. She asked Ms. Harryman to confirm if that is correct.

Ms. Harryman replied that is correct. She explained that if the voters put something into effect through an Initiative that would be in conflict with the General Plan, specific plan, PUDs, it would trump it all.

Mr. Dolan added that in this case, the Initiative actually suggested that the General Plan be changed; it was very direct and was an amendment to the General Plan.

Ms. Harryman agreed.

Chair Allen continued that if one were to say that a road was a structure – which the General Plan does not say, there has not been a vote and that has not been decided – that would create additional definition that would trump other agreements that were made, no matter how important those agreements were. She asked Ms. Harryman if that was correct.

Ms. Harryman replied that is correct. She explained that the City Council will be the ultimate decision-makers here on many issues, including whether a road is a structure, and if the City Council determines that a road is a structure, then that will override what the North Sycamore Specific Plan says with regard to it being able to go through to Sunset Creek Lane or out to Sycamore Creek Way.

Commissioner Balch noted that there has been a lot of serious talk about this precedent of the PUDs and that while the CC&R's are primarily an agreement between the owners and the Homeowners Association, the PUD is not; it is a City document. He asked Ms. Harryman if those are trumped as well.

Ms. Harryman said yes. She explained that a PUD is a form of ordinance, and an Initiative would trump anything that's specifically conflicted with the Initiative.

Commissioner Nagler noted, as has been stated several times, that a lot of the challenge is that that which was enacted trumping all others was unclear and unspecific, which allows it to be interpreted by subsequent ordinance or Council action. He asked Ms. Harryman if that was correct.

Ms. Harryman said yes. She added that to that point, Michael Roush, former City Attorney who has since retired, did an impartial analysis at that time, in 2008, and he identified several terms in the Initiative that were not defined and would need to be interpreted, and "structures" was one of those; "roads" was another. She continued that today, a lot of people are very firm in their position one way or the other, but as the former City Attorney opined, this is open to interpretation, and the City Council will have to make that decision.

Commissioner Nagler commented that, to that point, the current policy of the City Council that the answer to the question, "Is a road a structure?" is to be determined on a project-by-project basis, and, while from one perspective that could be the Council is not interpreting Measure PP, from another perspective, it could be that, in fact, the Council is interpreting Measuring PP to say that that particular question is to be applied on a case-by-case basis, and, therefore, there is not a global answer as to whether a road is a structure in the context of Measure PP. He asked Ms. Harryman if that was correct.

Ms. Harryman said yes. She indicated that that was where the Council last left it, that the Council wanted to decide on a case-by-case basis.

Commissioner Piper inquired if the exact number of homes proposed for this project at the time the Ventana Hills agreement was written was 150 or 196.

Mr. Dolan replied that he believes it was 150 but that he would want to research that to confirm.

Commissioner Balch commented that he believes the first plan was for 113.

Chair Allen asked the applicant if he had an answer to that question.

Mr. Meyers replied that Shea Homes had proposed 150 homes at the time the Bonde Ranch project was approved.

Referring to Mr. Dolan's statement that, in fact, people can cite different sections of the City Code to make a point, Commissioner Nagler stated that he thinks it would be fair to say that most of the comments this evening and certainly in written correspondence received try and make this argument whether the City Code states that a road is or is not a structure. He noted that the Municipal Code Section 18.08.535 provided by staff actually ends with the phrase *"but not including a fence or a wall used as a fence if the height does not exceed six feet, or access drives or walks."* He further noted that it is possible to interpret that an access road is a piece of cement that is constructed and put

on the ground and somehow has some engineering tending to it, and therefore, according to this section, a road is actually exempt from the definition of a structure. He asked if that was true.

Mr. Dolan replied that that is possible. He noted that that was a line of dialogue that the Commission had a couple of years ago and that some of the Commissioners were considering.

Commissioner Nagler stated that he understands that a lot of this conversation about the interpretation of Measure PP is, for some people, potentially precedential for decisions that may be looming on other projects or other elements of the General Plan or site specific plan. He noted that in his conversations with people on the issue, the Callippe Bypass Road comes up as an item of some interest and even controversy and that a decision ultimately to connect into the Sycamore neighborhood might somehow be creating a precedent on the Callippe Bypass Road. He inquired if the need for that Callippe Bypass Road continues to exist, and if that road will still be built at some point in the future or if the need has somehow become less over time.

Mr. Dolan noted that that is a very good question and not that easy to answer. He stated that if it were based on pure traffic analysis, how many trips and how many intersections operate, the current system, without the Bypass Road, collects the traffic and does its job without violating any of the City's Level of Standard. He noted, however, that as part of the discussion about the golf course and the surrounding neighborhood, the City agreed to have this completed and put it into the plans. He indicated that more important at this point than whether it is necessary or not is the question of whether it will ever be built. He explained that it comes down to a significant funding problem, as it was considered at a time when the Spotorno property also had a specific plan designation for a lot of units, pushing about 200 in total, and a project of that size might have been able to pay for the road. He added that with the adoption of Measure PP, that project is going to shrink considerably, like Lund Ranch II did, to the point where it is not going to be anywhere near that and at a certain point it just cannot pay for the Bypass Road. He indicated that it would cost millions of dollars to do it, and there is not enough development out there to make it happen.

Commissioner Nagler stated that as he is hearing Mr. Dolan, there are other factors that are more important to whether the road gets built than whether or not a precedent happens.

Mr. Dolan replied that he would not say they are important, but they probably have more influence on whether or not it happens.

Commissioner Nagler asked if his understanding is correct that the Option 3 recommendation of having 10 homes basically go in one direction and 40 go in another is because 10 is the number that is exempt from Measure PP.

Mr. Dolan said yes; that is the base or starting point for the conversation, and it seemed reasonable.

Commissioner Nagler noted that if a policy decision were made by the Council or the developer to divide the project and create two entrances, it could be a different number than 10.

Mr. Dolan confirmed that it could.

Commissioner Piper stated that this obviously is such a difficult topic and certainly one of the most difficult since she has been on the Planning Commission. She thanked the applicants for their patience and their contribution to the City, and acknowledged that Greenbriar Homes does build beautiful products. She indicated that there are two things she wants to talk about:

1. A huge portion of this is definitely emotional. From purely a standpoint of emotion and not taking into consideration Measure PP or the environmental impacts or the intent of the voters and the drafters of Measure PP and all of that, she would conclude that the access should be on the side of Sycamore Creek Way. That neighborhood knew that this was coming; there was a road there, there was signage there, it shows in the CC&Rs, and it was disclosed by the builders. These neighbors moved into that neighborhood knowing full well that at some point there would be access to another neighborhood. It is sad that both neighborhoods could potentially be burdened by traffic, particularly the Junipero Street side in that neighborhood because they continue to take the burden of more and more traffic, and that is not right.

Commissioner Piper indicated that she has been a Pleasanton resident for 40 years and knows that neighborhood well; she knows what has gone on in these last few years, particularly with commute patterns and the people who are driving from Pleasanton to the South Bay through Independence Drive to try to get through some of that traffic on Sunol Boulevard. Ms. LaBarge's comment was the most heartfelt because she is really truly dealing with this as a resident on that street.

2. From the standpoint of if a road is a structure or not, the environmental impacts, Measure PP, and what she personally believes the intent was of the drafters and the voters of Measure PP, Commissioner Piper stated that her belief is that a road is indeed a structure. This makes it super difficult because in that case, she would favor Option 1, knowing it would be upholding what the voters intended to do. In a perfect world, to mitigate some of the impact in the Junipero Street neighborhood, maybe the number of homes could be reduced.

Commissioner Nagler stated that, first of all, there are obviously four issues before the Commission, and the road being a structure and Measure PP may be the one that is controversial. He indicated that he totally supports the staff recommendations and findings on the other issues; the artificial slope and so forth. He agreed that this is a tough one and the reason deliberative bodies exist is to have these conversations and make majority votes and hopefully have life go on in a way that people can survive as a result and prosper.

Commissioner Nagler stated if one starts on this controversial question about where the road should be, with the position that Measure PP in fact does trump everything else, which is probably the most clear statement that could be made out of all of this, then the question becomes much more difficult: what was in the mind of the typical voter when he/she went to the polls and enacted Measure PP? He acknowledges that he actually does not know what are in the minds of voters when they do vote for one or the other candidate; that everyone comes to those decisions with independent thoughts and independent interpretations, but because it is a yes or no vote, a majority is formed on one side or another, but it does not mean that the voters have the same idea in their minds when they cast that vote.

Commissioner Nagler stated that having said that, it does become important to recognize that the City Council, after much debate and a very heartfelt attempt to interpret this element of Measure PP, formed public policy that says there is no universal or all-encompassing answer to the question; that in order to try and determine what the voters intended in protecting the hillsides in a very significant way would require looking at the question on a case-by-case basis, determine what is a 100-foot setback, and whether a road is somehow marring the aesthetic of a hillside and therefore violating the intent of the voters, that it really cannot be done other than by looking at the specific facts and the specific circumstance of the decision; and that is the City of Pleasanton's public policy.

Commissioner Nagler stated that, even assuming that Measure PP does trump all else, the Commission has to deal with how this applies to this specific decision. He indicated that as he stands on the hillside on the top of the Lund Ranch II development, and he looks at the slope and where the road would be and various ways the road could be constructed, and what that impact might be on the larger surroundings, as one person being asked to make a statement on this, he has come to the conclusion that the issues that the voters generally stated had in mind in enacting Measure PP were much larger and were attempting to impact a much more demonstrative and apparent environmental impact than the specific road that potentially would be built into Lund Ranch II. He indicated that therefore, for him, whether or not that road will need to be built, Lund Ranch II becomes then a question of all of the other factors that surround that decision if in fact the impact on Measure PP is rather minimal.

Commissioner Nagler stated that all those other circumstances are exactly what people have said: They want to be a city of integrity, a community where the Council's word matters, that they want to be able to tell their children that when they say something and repeat it, they mean it. He indicated that he believes it matters that the neighbors in the Ventana Hills and other surrounding neighborhoods, like good citizens and good neighbors, have gone to meeting after meeting and lived through decision after decision and have had both formal and informal agreements, and while, in the eyes of the law, it may not be enforceable from a court's perspective, that does not change the fact that it is an agreement; and in the exact same way that the residents of the Sycamore neighborhood have an agreement when they purchased their home that they recognize that that traffic may come through their neighborhood. He added that it seems that all agreements talk about where this road is going to be built are similarly existent, important, and represent what people culturally want to be as a community.

Commissioner Nagler stated that he fundamentally supports building the road out through the Sycamore neighborhood. He noted that it may not be the environmentally preferred thing to do, but he believes it is within the broad intent of Measure PP and pays obeisance to what the community wants to be.

Commissioner Nagler stated that he could also support staff's Option 3 recommendation because it is reasonable. He indicated, however, that he believes 10 is probably not the right number mostly because as he looks at the layout of the neighborhood, it could probably be divided a little more rationally if it were not limited to 10 homes. He added that if it were possible to support additional home sites, if they could be engineered elsewhere to make up for the home sites that might be lost by creating a cul-de-sac, because he is also paying attention to the economics of the project from the developer's perspective and does not know if 50 is the right number or if it pencils out, he could support a plan that still has 50 home sites while also creating this cul-de-sac. He stated that he could certainly support Option 3 as well.

Commissioner Balch stated that after reading inches of paper and sitting through hours of meetings, he actually is still right on the fence. He agreed that both Commissioner Piper and Commissioner Nagler make excellent arguments to both sides of this coin. He indicated that he is not certain he can interpret Commissioner Piper's current definition of if a road is a structure because if he were building anything and goes back to when applicants were coming and asking to build a balcony, and there are no CC&R restriction or PUD restriction whatsoever, and the Commission grapples with the question of whether the balcony should be allowed, that maybe it does not fit in the neighborhood, his general thought is that the rules should be known to everyone. He noted that this does not help him here much either because, as Commissioner Piper points out, the rules for the owners of the properties later on, basically Bridle Creek and Sycamore Heights, whether they were fully disclosed to the buyer's preferred level or not, may be a moot point. He indicated, however, that the fact is that they were contained in the CC&Rs and the PUD and the conditions and there is a sign at the end of the road that says this is the connection point.

Commissioner Balch stated that if he read what he considers as one of the rules, the rules argue that the road goes in, because he believes the City should uphold its agreements to the Mission Park neighborhood and the Junipero neighborhood.

Chair Allen stated that she too has struggled with this and that she has argued herself on both sides. She indicated that she is going to start on an emotional side because she was thinking about this the last few months, and her emotional side without a doubt would go for Option 2: the Sunset Creek Lane connection should go in, and 100 percent of the Lund Ranch traffic should go there. She reasoned that they are long-held agreements, and the private agreement is irrelevant to her because the fact of the matter is, there have been long held PUDs, there is a traffic model that always for many decades has assumed this is the plan, and this is part of the General Plan's assumption for circulation. She added that it is clear that the CC&Rs for Sycamore and Bridle Creek address this, and there is a sign at the end of the road.

Chair Allen stated that she has spent a lot more time thinking about Measure PP and reading it more carefully, talking to more people and looking at the Planning

Commissioner deliberations when it was asked the question, and looking at both the Councils' discussions on this when Cindy McGovern and Matt Sullivan were on the Council versus the more recent Council. She indicated that she was almost there in terms of saying she could live with the vagueness in Measure PP and that it was not defined. She noted, however, that when she started looking at retaining walls, she just could not say that a retaining wall was not a structure. She stated that she spent today looking almost everywhere and did not find one place that it was not defined as a structure. With respect to roads, she stated that she could say roads are vague and that she can live with saying it is vague and could let her emotions trump that one. She indicated, however, that she cannot do it on retaining walls, and it is clear that this road requires retaining walls, and retaining walls are clearly a structure in Measure PP, in the General Plan, in the Municipal Code, and even industry-wide where a three-foot tall retaining wall would still be a retaining wall, which is a structure.

Chair Allen stated that because Measure PP trumps all the agreements that have been reached before, she does not feel comfortable supporting Option 2 or 3, and would have to go with Option 1. She further stated that there are a couple of people that she has talked to who actually helped author Measure PP, and there are authors who believe strongly that a road is a structure, and both told her that when they were involved with Measure PP, their intention was not to preclude a road like Sunset Creek Lane; their intent was to preclude roads like Oak Grove and roads that go up. She added that they would be open if anyone else would create an initiative essentially saying what Measure PP says and would further define whether a road is a structure; but it would essentially legally exclude or exempt the Lund Ranch project from Measure PP. She indicated that this would carry pros and cons and could cause even more confusion, and it would drag out this process; but the good side of it would be it would create closure and might be a way to have a win/win with both sides.

Chair Allen stated that she truly believes that the intent of most people would be that that road would be all right; but the language that is written defines a retaining wall as a structure, and a retaining wall is clearly needed to build that road, unless the whole hill is graded, which is contrary to the intent of the initiatives and hillside protection.

Chair Allen added that she is strongly opposed to the estate lots, especially Lot 32 most specifically, because it is about 100 feet higher than the other homes and contrary to the intent of Measure QQ and Measure PP regarding protecting scenic hillsides and views. She indicated that she would like Lot 32 to be taken out, as well as Lot 31, which is a little lower at 40 or 50 feet above the other lots, but still higher than the rest.

Commissioner Balch asked Chair Allen if she wants Lot 32 to be eliminated or just have the home sited lower.

Chair Allen stated that she is proposing to eliminate the lot. She noted that it is a large site, so whatever gets built there will most likely be a very large house, prominently 100 feet above everything else.

Commissioner Balch brought up the element also mentioned by Commissioner Nagler regarding the unit of measure of two feet versus some other measure. He asked Chair Allen and Commissioner Piper if they were fine with that.

Chair Allen and Commissioner Piper replied that they were.

Commissioner Balch stated that the other element was the vertical setback: 100 feet down and 100 feet across.

Chair Allen stated she was comfortable with that for this project, but that she does not know how that would apply to other projects because it has not been tested. She indicated that she wants to make sure that this is not precedent-setting.

Commissioner Balch stated that was a good point because of the contours of the land. He noted, however, that he believes all the Commissioners are fine with it.

Commissioner Nagler agreed.

Commissioner Balch then mentioned artificial slopes and stated that he was fine with staff's interpretation.

Chair Allen stated that she was fine with it as long as the original slope line was less than 25 percent, and Mr. Dolan's engineering drawings indicate that the original slope was less than 25 percent.

Commissioner Balch stated that he would like to talk about the issue of the retaining wall. He stated that he also asked a lot of people who were community members but not directly involved with the issue about their definition of a structure. He indicated that a most of the people hesitated at first, and then some said it is infrastructure. He added that a lot of people asked how big the road was and if it is a dirt road or a freeway. He stated that he actually grappled with that a lot and still does because he personally could easily get to the point of saying it would be by putting down basic base rock, a foundation for a road and a pavement overlay that he could see was not a structure, basically because it could be easily moved, easily done, and not significantly engineered, which is his kind of my criteria for structure.

Commissioner Balch stated that he also got to the retaining wall question quickly because he saw the slope as well and used the four-foot measurement Mr. Dolan had pointed out earlier. He noted that, on the other side, if it has to be engineered, if it's 90 degrees off the freeway such as the Altamont, or the Hayward Hotel road, those would obviously be structures. He stated that he came down to how much engineering is involved, and the first level of engineering came at the retaining wall question. He stated that if a road could be built with basic base rock and pavement overlay and a four-foot high qualified or non-engineered wall, he is comfortable saying that it is not a structure because they are moveable without too much work. He then stated that the intent of Measure PP is an interesting concept, and Commissioner Nagler had commented that the intent of Measure PP is not to have mass hillside destruction. He asked how much grading can be done then, so a retaining wall does not need to be constructed. He asked Chair Allen and Commissioner Piper if this persuades either of them to go the other way.

Commissioner Piper said no.

Commissioner Nagler stated that from his perspective, Commissioner Balch is making a point he can support. He indicated that he can see building this road within the context of the importance of Measure PP and what Measure PP intends to do which is incredibly important, and this road is acceptable within that context.

Chair Allen stated that she can see building a road within the overall picture of what people probably thought. She indicated, however, that she has to honor the wording as she reads it, that the voters signed, and she just cannot legitimately say that a retaining wall is not a structure or seeing huge grading instead of retaining walls. She pointed out, on the other hand, that the Ventana Hills folks had agreements, just as important for those people who voted for Measure PP. She noted that Pleasanton is a community of character, and both are important in that respect.

Commissioner Nagler asked if a retaining wall one-foot high would still be a structure.

Chair Allen replied that she thought about that, but then she asked herself where does it end? She indicated that the other acid test she took was Measure PP, a hillside conservation protection initiative, not a hillside expansion initiative. She stated that she feels obligated to take a conservative view on this because it was an Initiative related to conserving hills.

Commissioner Balch stated that one of the arguments he has listened to is the agreement of upholding the City's community of character, based upon a much larger project than the current proposed project. He indicated that he understands Junipero Street's concerns and focuses in on them because they are the most impacted. He noted that when they came to the table back then, it was for 150 homes up there, and so if it is three times the number of homes, it would be three times the number of trips, which totals 1,500 trips. He pointed out that there is a big difference on their road than the 550 trips max and obviously filtering through the different developments. He pointed out that the project shrunk to 50 units; one-third the size, which in and of itself is significant development. He recalled that one speaker mentioned at the Work Session that Measure PP is working because this project did shrink because of it, that the conservation element caused this project to shrink; hillside preservation was accomplished through the Initiative, but the unintended consequences are what the Commission is grappling with today. He noted that this is a very minor road, not the Hayward Hotel road; a road with less grading than Bernal Avenue and very much less visible than Bernal Avenue going up the side of the hill and over.

Commissioner Nagler stated that there are still 550 average trips a day; there is still traffic, and the question still remains where that traffic should go.

On that note, Commissioner Balch questioned why staff Option 3 versus the EIR Option 3 is the way to go.

Commissioner Nagler replied that it is the possibility of cut-through, because if one end of the neighborhood is connected and the exit is on the other end, the whole cut-through issue could be exacerbated.

Chair Allen stated that it is a long way around. She added that at the last meeting, the Commission talked a little bit more about volumes, and Mr. Tassano hypothesized that the volumes would be roughly two to three times as many cars if the road were allowed to be open.

Mr. Tassano agreed that it does seem like it is a long way around, but staff has watched a lot of different long-way-around routes go, and it is a valid concern. He indicated that he does not usually bring up concerns if they are minor, but it concerns him that people would take that Junipero Street/Independence Drive route. He noted that 150 vehicles go there every morning that cut through, and they are just going to school. He was his concerned that if it is connected, then it would provide that cut-through option. He added that it is not certain either if Junipero Street and Independence Drive are going to get 20 percent or 80 percent of the traffic, if they are all going to go to Raley's and take that other route. He concluded that the final routing would be a little bit more of the unknown, and it is more of a 50/50 split.

Commissioner Nagler inquired if the facts changed the positions.

Chair Allen replied that they did not change for her.

Commissioner Piper stated that it did not change for her either.

Chair Allen called for a break at 10:20 p.m. and thereafter reconvened the meeting at 10:28 p.m.

Commissioner Balch suggested that the Commission go through the conditions and the other elements before making a motion.

Mr. Dolan stated that the Commissioners may want to decide on the three options first as the Commission does not yet have an agreement on the basic vote.

Chair Allen inquired if the Commission could do it in two parts then: have a basic vote on the options first and if it passes, add the conditions as a second vote with any additional conditions or modifications.

Mr. Dolan replied that the Commission can do whatever it wishes. He added that the Commissioners and everyone in the room should probably know what happens if there is a 2-2 vote. He indicated that Ms. Harryman can address that.

Ms. Harryman stated that the Commissioner's Handbook actually contemplates a 2-2 vote when there is an absence, and Commissioner Ritter is absent tonight. She indicated that if there is a 2-2 vote, a tie vote on a motion shall be carried forward to the next meeting at which all Commissioners are present. She stated that she does not know the Commissioners' schedules and if everyone is available for the next meeting.

Mr. Dolan noted that there will not be a full Commission until August.

Commissioner Piper asked Commissioner Balch if he wanted to share his thoughts on where he stands.

Commissioner Balch stated that he is debating the question of what the community wants, that there are 20 years of PUD precedence saying the road was going over the hill, and an abrupt course correction by the voters through a ballot amendment process possibly corrected too far. He added that the difficulty is how to equip himself into the status of all of the voters, and if he is qualified to do that.

Commissioner Nagler stated that his 6th grade teacher asked him a really good question: *When you're elected to Congress, is your job always to vote the will of the majority of your district or is your job to try to interpret to the best of your ability what is best for your district?*

Commissioner Balch replied that his answer would change based upon what he would like the outcome to be if he were a United States Congressman. He stated that he thought he was going to be an excellent umpire in the Little League, and he turned out to be the worst and should never have tried to umpire. He stated that he worries in general about Initiative-based legislated processes because he believes voters are told something before leading up to the vote: *This is going to save the hills and there will be nothing ever built*, and the voter will take what that solicitor says to them maybe a little bit of too much on face value, and the next thing is that on paragraph 30 or page 6, there is something that was not intended, and the pendulum swings a little too far and it kind of rudders back out to the middle over time.

Commissioner Balch stated that he worries that Measures PP and QQ interpreted too rigidly would do that to Pleasanton, and he thinks that he has to believe in some regard that 20 years of precedent that this is going over the hill is a fairly consistent rudder that he has adapted to, and now he is asking how he gets there with his interpretation of what a structure is, and in terms of what he thinks, how he can say the vote was too far for the interpretation. He continued that 20 years is a significant amount of time of planning, and the best-laid plans were to go over the hill. He stated that he has to believe that was because that was the community's intent over a consistent period of time, and there was no initiative process early on to change that course. He pointed out that the initiative process was for a different eyesore in the public's immediate vision at that time, and this project has gotten caught up in that and as a result, the project they have done is outstanding.

Commissioner Balch stated that as he looks at this scale model and at going off to Lund Ranch, and he thinks that this is not as impactful as the deal that the Commission was being asked to uphold, which is the 150 homes. He indicated that in his opinion, this plan of 50 homes is beautifully designed, except for Lot 32, and he believes this is a beautiful community that should not be broken into two parts because the community should be connected, but he does not know how to address the cut-through traffic and that is a concern. He added that he also worries about going with any option that crosses the creek for his basic concern of the environment.

Commissioner Balch moved to:

- (1) find that the Final Environmental Impact Report (EIR) conforms to the California Environmental Quality Act (CEQA);**
- (2) find that the proposed PUD Rezoning and Development Plan, and the Development Agreement are consistent with the General Plan;**
- (3) make the PUD findings for the proposed Development Plan as listed in the staff report; and**
- (4) recommend that the City Council:**
 - (a) certify the Final EIR as complete and adequate;**
 - (b) approve the CEQA Findings and the Mitigation Monitoring and Reporting Program;**
 - (c) approve Case PUD-25, the PUD Rezoning and Development Plan as shown in Scenario 3 of the Final EIR, subject to the Conditions of Approval listed in Exhibit A of the staff report, as modified by the staff memo dated June 24, 2015**
 - (d) approve the Development Agreement, as shown in Exhibit B of the staff report, to vest entitlements for the project.**

Commissioner Nagler seconded the motion.

Mr. Dolan clarified that the motion is for Scenario 3 of the EIR and not Option 3 in the staff's lists of options in the staff report. He asked the Commissioners if they understand that.

Chair Allen stated, for clarification, that Scenario 3 in the EIR, as she understands it, would be Option 3 in the staff report if the road did not have a cul-de-sac and was open on both sides.

Mr. Dolan replied that was correct.

ROLL CALL VOTE:

AYES: Commissioners Balch and Nagler
NOES: Commissioners Allen and Piper
ABSTAIN: None
RECUSED: None
ABSENT: Commissioner Ritter

The vote on the motion is a tie at 2-2.

Commissioner Nagler asked Chair Allen if changing Option 3 versus Scenario 3 would make a difference for her vote.

Chair Allen said no.

Mr. Dolan asked the Commissioners if they can have a clean record and take a position or if that motion implied a position on the other items.

Chair Allen asked Mr. Dolan if he wanted the Commission to take a position on those issues so the Commission will not need to come back to them.

Mr. Dolan replied that he heard the Commissioners were united on those issues and so ultimately and more important is that it does not appear that the Commission is going to get a motion passed tonight. He noted that the vote is 2-2, and it is not going to be resolved until the Commission has a fifth member. He added that if any of the Commissioners can think of a motion that he/she thinks would pass, he/she should go ahead and try it, but it does not seem like from where you are now, you are going to get there.

Commissioner Nagler stated that he thinks the Commission should try to discuss it before just throwing in the towel. He addressed Chair Allen that he hears it is the retaining wall being a structure, the difficulty getting up and over the hill.

Chair Allen said yes; that is the main one.

Commissioner Nagler addressed Commissioner Piper, stating that from what he has heard from her, it is more the more the interpretation that a road is a structure no matter the size of the road per se, and that because Measure PP trumps, she cannot get to the finding either.

Commissioner Piper said yes. She noted, however, that the other Commissioners talked about how one cannot really see this road and that maybe that was not really the interpretation. She indicated that makes sense to her but she thinks that it is something that is engineered, and if a road is paved, it is engineered to some degree.

Commissioner Balch clarified that the only reason why a road cannot be a structure is if it is not built. He asked if a dirt road is a structure, and the answer is no, but a freeway is.

Chair Allen asked if the reason a dirt road is not a structure is because it does not have asphalt on top of it.

Commissioner Balch stated that one can pave over dirt and be done, but obviously, this is going to be a road, base rock and engineered. He indicated that he thinks one could still put base rock in and pavement down and still grade a hill slightly and do the less than four-foot retaining wall, and per se, the road is not a structure.

Commissioner Nagler inquired if there is a way to engineer the road with less grading that would be required with that retaining wall. He inquired if the reason a retaining wall is necessary is to retain run-off and stop run-off on the roads; the dirt does not come and overtake the road.

Mr. Dolan replied that a retaining wall reduces the amount of grading. He explained that a certain angle can be cut out from the road or a retaining wall can be built and leave the dirt there, but it is more about reducing grading than it is controlling runoff.

Commissioner Balch stated that the difficulty he has with this is the grading because he does not want to go against, in principle, the premise that the intent of Measure PP is to protect the hills, and grading takes him out of the game real quick, which means a

retaining wall has to go in; but if there is too much retaining wall, it will not meet the requirement either. He noted that he thinks the difficulty is that there is no designed road and there is no engineered road; the grading and the cut-in is unknown, and it appears that there is going to be a bit more grading than just the simple one tractor type.

Commissioner Nagler stated that the other thing that is not known is exactly where the cross-over will exactly be over the creek, so it may be that the construction of the road is impacted by where the creek cross-over is and, therefore, what projection will be used to get up to connect.

Commissioner Balch agreed. He stated that if the connection across the creek is placed closer to the Lund Road connection, there will be a steeper road.

Chair Allen stated that it sounds like having that information when this item comes back to the Commission would be helpful to everyone.

Commissioner Nagler stated that he doubts anyone will design a road.

Mr. Dolan explained that it is difficult to get to design something that has not been proposed. He added that one of the reasons staff is comfortable recommending it in a more conceptual manner is that the Tentative Map has to come back to the Commission, and there would be another chance to look at exactly how this ends up being designed if that is what the requirement was. He indicated that he recognizes that by then, the Commission will be past the point of which option to pick. He stated that staff will try and get some of that information if it is so critical for the Commission to arrive at a decision, but he cannot guarantee it.

Commissioner Balch stated that he would like to go a little further, that the applicant's position is that the addition of a road is significant grading. He asked staff to go into the definition of "significant": how significant is "significant" on grading?

Mr. Dolan replied that he believes the applicant has estimated 11,000 cubic yards. He indicated that the Commission could ask one of their team to come up because they have done a little bit of work on it, although they do not have a design. He asked if that number is going to mean anything to the Commission.

Chair Allen replied that it will not mean anything to her except if someone helps to translate it.

Commissioner Balch stated that his concern is grading because if grading is significant, it would violate his principle of upholding Measure PP, if the mass destruction of the hillside occurs because of trying to put in a road.

Mr. Dolan stated that the applicant confirmed that it would be 11,000 cubic yards without the retaining walls.

Commissioner Nagler inquired if the 11,000 cubic yards would start about $\frac{3}{4}$ the way up the hill and grades down to the base, but as far as up the hillside, it would stop at the ridge of trees that is up towards the top.

Mr. Dolan replied that there would be some above and some below.

Commissioner Balch stated that he has no idea what 11,000 cubic yards of fill looks like. He asked staff how much fill was put in for the Bernal Phase II project.

Mr. Dolan replied that he cannot tell that, but there is a graphic which shows the layout and the extent of grading in the EIR when it talks about the alternatives: Figure 5-3 on page 5-23. He indicated that the road is visible; there is a dash line that says "limited grading" and talks about how much cut and how much fill.

Commissioner Balch asked staff what the scale is and if each significant major line is 50 feet or less, because 470 feet looks like towards where the retention basin would be.

Mr. Dolan said it is 10.

Commissioner Balch clarified that for each major line, it is 10 feet down topography-wise; so it looks like they are altering approximately where the arrow comes in with the preliminary earthwork paralleled on the right bound; and on the left bound is approximately $\frac{1}{4}$ inch from the property line on major line 470 on the left.

Mr. Dolan stated that it looks like grading will be over an elevation change of 70 feet.

Commissioner Balch asked that the graphic be displayed, showing where the grading would be. He then pointed to the road that goes up to Sunset Creek Lane.

Commissioner Nagler inquired if this is to avoid a retaining wall.

Mr. Dolan said yes.

Commissioner Balch stated that the irony of this conversation is that in order to save as much of this hillside as possible, putting in a retaining wall must be considered; but by the very nature of Chair Allen's interpretation of Measure PP, that retaining wall obviates the ability to do it at all.

Chair Allen replied that unfortunately, that is the situation. She added that it does not sway her vote though because she is still interpreting it just the way it is written.

Commissioner Balch stated that the Commission actually had one of those cases recently when Chair Allen was absent, where the Commissioners almost tied on the balcony. He then addressed Commissioner Nagler, as it sound like Chair Allen and Commissioner Piper are pretty strong in their opinions, and asked if he believes this grading is too significant and violates Measure PP's premise to protect and conserve the hillside, and thus must be abandoned in order to protect the hillside, or if this grading, in his view, is acceptable in order to protect the hillside.

Commissioner Nagler replied that he predicated his vote on the expectation that there would be a retaining wall because that is too much grading for him. He indicated that when he was out there being shown the property, he asked the question how big the retaining wall would be if it can just go straight up and over. He acknowledged that he was obviously asking an extreme question, but again in an effort to save trees as well as the hillside. In answer to Commissioner Balch's question, he stated that he assumed there would be a retaining wall.

Commissioner Balch stated that he was looking at the graphical scale of distance, because the way he looks at this, the grading would basically start at Lot 41 and the goes all the way to Lot 47; and that is a lot of grading, equivalent to about five or six houses.

Commissioner Nagler stated that it is still possible to preserve the hillside substantially if Chair Allen is willing to accept a three-foot retaining wall or however it ended up being designed. He indicated that it became pretty clear to him standing out there that that is exactly the trade-off: retaining wall versus grading.

Commissioner Balch stated that when he stood up at the top and looked over, it did not seem so significant; but when he stood at the bottom and looked up, it seemed a bit more significant without a doubt, but other hillsides surrounding the knoll seemed even much more significant. He indicated that meeting the requirements of protection under Measure PP is, in his opinion, the right thing.

Commissioner Balch then stated that the Commission should now determine if anyone is willing to change his/her vote or not, and if that is the case, the Commission can note on a new motion; otherwise, the Commission should move on.

Chair Allen stated that she is not changing her vote and asked Commissioner Balch if he was.

Commissioner Balch replied that he does not believe he is. He stated that from his position, he can still make the finding in Scenario 3 of the EIR and connect all the neighborhoods. He noted that he understands the cut-through concern but thinks it would benefit the community, especially at those farther outbound areas. He added that he would hate to have someone have to drive all the way in to Sunol Boulevard, and then all the way back out to visit their neighbor's back fence. He indicated that he does not agree with that and supports Scenario 3 of the EIR.

Commissioner Piper stated that she wanted to go that way, but she just cannot.

Commissioner Balch indicated that he respects her decision.

Chair Allen stated that she too wishes to go that way too, but she cannot.

Commissioner Balch replied that that is perfectly understandable.

Mr. Dolan asked Ms. Harryman if a motion is needed to continue the item.

Ms. Harryman said no; it continues automatically on the 2-2 vote. She indicated, however, that the Commission has another procedural item from the Commissioner's Handbook. She noted that it is approaching 11:00 p.m., and by 11:00 p.m., the Commission needs to determine by vote which agenda items it will take up this evening with the intent of completing by 11:30 p.m. She noted that there are more items on the Agenda, in particular, Item 6b. and other items.

Mr. Dolan requested the Chair to allow him to make one comment that he wanted to make earlier, before the Commission continues. He noted that several of the speakers commented on something he said in his presentation, and it was the right thing for them to call him on it. He indicated that what he said was that staff wanted the Commission to call a road not a structure so it would support staff's recommendation. He pointed out that the way the words came out was not really the way he meant them. He stated that staff is making the recommendation that the Commission does not call a road a structure, and that staff has a certain recommendation; but they were not connected, but it appeared that way when he said it.

Commissioner O'Connor returned to the dais.

Chair Allen moved to continue the meeting to consider Item 6.b., P15-0331, Rex and Jean Shoemake and the May 27, 2015 Meeting Minutes.

ROLL CALL VOTE:

AYES: Commissioners Allen, Balch, O'Connor, Nagler, and Piper
NOES: None
ABSTAIN: None
RECUSED: None
ABSENT: Commissioner Ritter

**b. P15-0331, Rex and Jean Shoemake
Application for Administrative Design Review approval to construct an approximately 324-square-foot, 14-foot tall detached patio cover in the rear yard of the property located at 5082 Crestwood Court. Zoning for the property is R-1-6,500 (One-Family Residential) District.**

Adam Weinstein, in Natalie Amos' absence, presented the staff report and described the scope, layout, and key elements of the project.

Commissioner O'Connor inquired if the Noise Ordinance of the Municipal Code also governs noise created by human voices at 60 dBA as it does for amplified noise.

Mr. Weinstein replied that he thinks that generally speaking, human voices are not governed by that standard.

Commissioner Balch referred to the case of the Masons.

Mr. Weinstein agreed that this was an issue that came up in the case of the Millers and the Masons.

Commissioner O'Connor stated that this also came up in the discussion of the play area behind Raley's. He recalled that the Commission was very concerned about human voices, and it was one of the reasons the application was denied.

Mr. Weinstein stated that there has been a debate about the language of that specific provision in the Municipal Code, and generally speaking, human voices had been excluded from that threshold. He noted that things like televisions, dogs barking, lawn mowers, leaf blowers, and those sorts of things could exceed that threshold, but not human voices.

Commissioner O'Connor stated that the reason he asked is because when the Municipal Code says that "*no person shall produce ...*" it then says, "*or allow to be produced by any machine...*" so it sounds like if that latter phrase is removed, it does say "*no person shall produce on residential property any noise levels....*" He inquired if human voices congregating are a concern of the neighbors.

Ms. Harryman stated that she does not actually know how Pleasanton police officers interpret this and how they enforce it. She indicated that this fortunately does not come up often. She noted that she could read this either way, for example, if it had another comma elsewhere, and would then have a more definitive answer; but like the Commission, she is struggling with whether human voices alone are enough. She further noted that she read it one way the first time and then read it more closely and read it the other way.

Commissioner O'Connor inquired if the clause would be governed by how the Pleasanton Police Department enforces it.

Ms. Harryman replied that she does not know how this is interpreted or if people who are just sitting in the backyard and being louder than 60 dBA are in violation of the ordinance. She indicated, however, that it would apply to TV noise; for example, if the TV was so loud that it was violating the 60 dBA threshold, then the police would come in and issue a noise citation. She noted that that does not change the application before the Commission one way or the other because the Code is there, no matter what.

Mr. Weinstein stated that it is a very common occurrence for people to use their backyard sometimes very intensively. He indicated that staff's experience in talking with the Police Department and Code Enforcement Officer is that people calling about human voices and human voices contributing to exceedance of the noise threshold is not very common; it is not something staff hears about very much.

Commissioner O'Connor stated that it sometimes happens with high school parties.

THE PUBLIC HEARING WAS OPENED.

Rex Shoemake, Applicant, stated that he and his wife have lived in Pleasanton for 30 years, and this is their fourth home. He indicated that Ms. Amos represented and did an accurate job on the staff report and that they would like to comply with the height compromise of reducing it from 14 feet to 12½ feet.

Jacki Martin, neighbor, stated that she shares a back fence with the Shoemakes; the part where the patio cover will be located. She indicated that she was initially shocked by the size of the structure as it seemed very imposing from the brief information given on the notification card sent out by the City. She noted, however, that in conversation with Natalie Amos of the Pleasanton Planning Division, she was informed that the Shoemakes would be willing to compromise and lower the height to 12½ feet. She added that she was also able to see the plans and that the patio cover would be located 10 feet from the shared fence. She stated that she then visited the Shoemakes to get a perspective from their yard, and she was comfortable with the location of the proposed patio cover. She added that she also saw the location of the orange tree which will eventually fill in nicely, but it is not at a location that would diffuse the lighting or any noise when the patio area is in use. She noted that the sketch of the bottom measurement of the roofline was not to scale, and the measurements were not given, but she believed the gutters on the structure will be at the same height as the gutters on their house.

Ms. Martin stated that there were concerns regarding privacy and lighting leaking into their yard. She indicated that their master bedroom is in direct line with the patio cover and asked what her options for correction would be if the project lighting is approved but causes a problem. She stated that all in all, she does not object to this project going forward if the height of the structure is approved for the compromised 12½ feet and a means to correct any possible lighting issues that may arise are addressed and resolved.

Heather Brillhart, neighbor, handed the Commissioners a picture of the view from her bedroom of the proposed patio cover. She stated that after she received notification of the Shoemakes' proposal, she went to the Planning Division and was dismayed to find out the Shoemakes wanted to construct a very large entertainment structure that will look directly into her bedroom window. She noted that the plan included a television, so amplified sound was added to her concern, and she felt as though this project overly imposed on the privacy and tranquility of her home and the sanctuary of her backyard.

Ms. Brillhart stated that on May 26th, City staff came to her home and saw from her bedroom the slanted, two-inch piece of PVC pipe that Mr. Shoemake had put up. She indicated that it was not overstated, but it is important to keep in mind that this project is not a two-inch piece of PVC pipe, but an 18-foot wide and 14-foot tall structure. She stated that to give the Commission a better understanding of the height of the structure, the height of the peak of her own home is around 14 feet high. She noted that she brought a picture of the view from her bedroom window and that the height of the shed in the picture is 9½ feet at its peak; the location of the proposed structure would be just beyond that and would be 50 percent taller. She indicated that right now, the foliage of the tree is green, which would currently provide minimal coverage, but everything in that direction is deciduous, and during a good portion of the year, she would be subjected to the view of the back end of this project.

Ms. Brillhart stated that on May 29th, she sent an email to the Planning Division and requested a copy of the electrical lighting and sound plans, and she was told that there was none. She responded that she felt this hearing would not be effective without these

details because she would not understand the scope of the project. She stated that Natalie Amos, project planner, then called her saying that the Shoemakes would be willing to drop the height to 12½ feet, just a foot and one-half lower than the peak of her home. She added that the Shoemakes wanted to have four low-voltage lights installed under the roof of the structure. She stated that low voltage does not mean anything as it is a matter of wattage and intensity. She added that when she called Code Enforcement, one of the specific issues brought up was the fact that LED lights, which have very low voltage, have very high intensity and a lot of problems with spill-over. She indicated that there may be no intention of installing speakers, but flat-screen televisions have sound bars, and that is amplified sound. She further indicated that she was relieved to find out that the hours for the sound of 70 dBA are from 8:00 a.m. to 8:00 p.m., Monday through Saturday, and from 10:00 a.m. to 6:00 p.m. on Sundays and holidays. She indicated that 70 dBA is the sound of an average radio, and 60 dBA is the sound of an average conversation. She stated that she was also informed that they were willing to plant an orange tree for screening, but Jacki Martin, another neighbor, stated that the orange tree they put in does not provide any screening of the proposed structure and is nowhere near blocking her view.

Ms. Brillhart stated that because of all these aforementioned reasons, she did not feel that an adequate compromise had been proposed, and without specific information on the items requested, she did not feel that this is a project she is willing to risk being subjected to. She indicated that she is familiar with certain projects that have happened in the area, such as a bedroom window at 5252 Meadowood Court that a neighbor objected to, stating privacy concerns, and the applicant planted Italian Cypress to completely obstruct the view for the concerned neighbor. She added that another good example is Pleasanton Valley Club, which constructed a large shed for storage, but because of its location, was not authorized to install an outside light for it. She indicated that the Shoemakes' lighting height is a maximum of eight feet, angled away from any homes. She stated that she is not opposed to the Shoemakes having a mutually acceptable structure, but the one that is proposed is invasive.

Mr. Shoemake stated that everything about their proposal was detailed and that they invited Ms. Brillhart to their home to go through all the details, but she elected not to come over.

Jean Shoemake stated that they would not be before the Commission if they had decided to go to ten feet and that they can still do that. She indicated that she explained to Ms. Martin that the roofline would probably be not as attractive, and it probably would not be as good a sound barrier as a complete roof would be. She noted that that would be their option if they have to go that route.

Commissioner O'Connor asked the Shoemakes if they knew how high their gutter is.

Mr. Shoemake stated that they had the contractor over this weekend and that the gutter is at 8½ feet.

Commissioner O'Connor inquired if that is about the same height as the home.

Ms. Shoemake said yes.

Commissioner Nagler stated that obviously, one of the objections is about privacy, and he is unclear about how the roofline will affect privacy, considering that it is the same height as the fence.

Commissioner Piper commented that she thought the item was before the Commission because of the height of the structure and not any other concern.

Ms. Shoemake stated that the bottom of the gutters and the top of the fence meet, so the structure is closed off.

Commissioner Nagler stated that privacy is then not an issue.

Ms. Shoemake stated that that would take the privacy issue back.

Mr. Shoemake stated that there is new fencing all around the property as well.

THE PUBLIC HEARING WAS CLOSED.

Commissioner O'Connor stated, for the sake of the audience, that the proposal has a condition of approval that if the lighting ever was too intense or directed in the wrong direction, staff would contact the owners; and if this was not corrected, the matter could ultimately be taken back to the Commission, who could then either modify the conditions of approval or revoke the permit.

Mr. Weinstein stated that was correct. He noted that the conditions require the project to be developed according to the plans, and part of the plans would include lighting. He added that those lighting plans would come in for staff review, and then the project would be conditioned to maintain those project specifications which would include the lighting.

Chair Allen asked the Shoemakes if they would be willing to have their neighbors come over to take a look at the lighting plan.

Ms. Shoemake replied that they would be happy to have Ms. Martin over. She added that the lighting would be recessed in the roof, and it would be impossible for the light to affect the neighbors, given the way their yard is positioned.

Commissioner Balch stated that he understands the structure needs a building permit because it is over 120 square feet. He asked staff what the ten feet is about.

Mr. Weinstein replied that if the structure is less than ten feet tall, the proposal would not have to go through the Administrative Design Review process where the neighbors are noticed and the proposal for architecture and design are reviewed by Planning staff.

Commissioner Balch clarified that a building permit is required even if the structure meets the minimum building size; however, if it is under ten feet tall, the proposal does not need to be noticed.

Mr. Weinstein replied that was correct.

Mr. Shoemake indicated that they still need a building permit.

Mr. Weinstein replied that is correct, but not a Planning review.

Chair Allen verified that TVs are permitted in backyards, whether or not there is an awning or swimming pool.

Mr. Weinstein said yes. He indicated that one can drag a TV up the middle of the lawn, plug it in, and listen to it or watch it.

Commissioner O'Connor stated that he heard concerns over lighting, noise, and privacy. He noted that the lighting will be tucked up under the roof, so there will not be a problem with lighting spillover since the gutter is only at eight feet, and staff will review the lighting plan. He indicated that the noise is going to be covered by the City's Noise Ordinance, and if it is intrusive, the applicants would either correct it or it will come back to the Commission. He added that there should be no problem with privacy as this will be about people at ground level.

Chair Allen stated that there is another possibly subtle concern, whether with privacy or the view, in connection with Ms. Brillhart's request to have some additional trees planted that would create screening so she does not see that roofline.

Commissioner Balch indicated that he is not supporting that idea and would like to see where the Commission stands on that element before presenting it to the applicant. He stated that one thing he has seen people do to address the privacy concern where the structure's lower pitch point is above a six-foot fence point is to put in lattice work at two feet down from the top to give it additional screening. He added that that could easily be done on the east side of the structure.

Mr. Shoemake indicated that they have lattice on their fence all the way around the property.

Commissioner O'Connor stated that if the Shoemakes did not build the structure and the neighbors were just standing in their backyard, there would not be any more intrusion and privacy than if they were standing by a ten-foot high fence.

**Commissioner O'Connor moved to approve Case P15-0331, subject to the Conditions of Approval as shown in Exhibit A of the staff report.
Commissioner Piper seconded the motion.**

ROLL CALL VOTE:

AYES: Commissioners Allen, Balch, Nagler, O'Connor, Piper
NOES: None
ABSTAIN: None
RECUSED: None
ABSENT: Commissioner Ritter

Resolution No. PC-2015-19 approving Case P15-0331 was entered and adopted as motioned.

2. APPROVAL OF MINUTES

c. May 27, 2015

Commissioner Balch requested that the first sentence of the second full paragraph on page 11 be modified to read as follows: "Commissioner Balch stated that his ~~biggest thing~~ largest concern and what he has not reconciled in terms of getting over the hump is that he does not see how privacy is not already hampered by this view as demonstrated in the exhibit before ~~in front of~~ the Commission."

Commissioner Piper stated that the sentence in the second paragraph on page 13, "Commissioner Piper replied that she thinks the applicant is 100 percent on the balcony issue," is not very clear and requested staff to listen to the recording for verification.

Commissioner Balch moved to approve the Minutes of the May 27, 2015 Meeting, as amended.

Commissioner Nagler seconded the motion.

ROLL CALL VOTE:

AYES: Commissioners, Balch, Nagler, and Piper
NOES: None
ABSTAIN: Commissioners Allen and O'Connor
RECUSED: None
ABSENT: Commissioner Ritter

7. MATTERS INITIATED BY COMMISSION MEMBERS

No discussion was held or action taken.

8. MATTERS FOR COMMISSION'S REVIEW/ACTION/INFORMATION

a. Future Planning Calendar

b. Actions of the City Council

No discussion was held or action taken.

c. Actions of the Zoning Administrator

No discussion was held or action taken.

d. Matters for Commission's Information

No discussion was held or action taken.

a. Matters for Commission's Action

- (1) Request to name the private street "Augustine Place" for the previously approved Planned Unit Development plan for a six-lot single-family development (PUT-72) located at 4693 and 4715 Augustine Street.**

Due to the lateness of the hour, this item was not considered and was re-scheduled to the July 8, 2015 meeting.

9. ADJOURNMENT

Chair Allen adjourned the meeting at 11:40 p.m.

Respectfully submitted,

Adam Weinstein
Secretary