



PLANNING COMMISSION MEETING MINUTES

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

APPROVED

Wednesday, January 25, 2012

*(Staff has reviewed the proposed changes against the recorded proceedings
and confirms that these Minutes are accurate.)*

CALL TO ORDER

The Planning Commission Meeting of January 25, 2012, was called to order at 7:00 p.m. by Chair Jerry Pentin.

PLEDGE OF ALLEGIANCE: The Pledge of Allegiance was led by Commissioner Olson.

1. ROLL CALL

Staff Members Present: Brian Dolan, Community Development Director; Janice Stern, Planning Manager; Julie Harryman, Assistant City Attorney; Steve Otto, Senior Planner; Shweta Bonn, Associate Planner, and Maria L. Hoey, Recording Secretary

Commissioners Present: Chair Jerry Pentin, and Commissioners Phil Blank, Kathy Narum, Greg O'Connor, Arne Olson; and Jennifer Pearce

Commissioners Absent: None

2. APPROVAL OF MINUTES

a. December 14, 2011

Commissioner Narum requested that the following amendments be made:

- Modify the first sentence of the last paragraph on page 8 to read as follows: "Chair Narum stated that as a member of the Task Force ... and agreed to include on the final list to rezone only what the City needs...."
- Modify the sentence on the second paragraph of page 9 to read as follows: "Chair Narum clarified that she is not proposing that the number be reduced to exactly the required 2,080 units."

- Modify the sentence on the eighth paragraph of page 9 to read as follows: “Chair Narum suggested eliminating the Sheraton site, although it is by the BART station, or the half of the CM Capital site that is currently occupied, or the Kaiser site.”
- Modify the sentence the tenth paragraph of page 9 to read as follows: “Chair Narum suggested that another option would be to reduce the housing on the Auf der Maur/Rickenbach site could have a little bit more of retail and less of residential property by one-half to one acre and increase the retail acreage by that amount.”

Commissioner Blank requested that the sentence on the sixth paragraph of page 9 be modified to read as follows: “Commissioner Blank stated that at the Joint Workshop the discussion was to do more-, but not an excessive amount more.”

Commissioner Narum moved to approve the Minutes of the December 14, 2011 meeting, as amended.

Commissioner Blank seconded the motion.

ROLL CALL VOTE:

AYES: Commissioners Blank, Narum, Olson, Pearce, and Pentin
NOES: None
ABSTAIN: None
RECUSED: None
ABSENT: None

The Minutes of the December 14, 2011 meeting were approved, as amended.

b. January 11, 2012

Commissioner Narum moved to approve the Minutes of the January 11, 2012 meeting, as submitted.

Commissioner Pearce seconded the motion.

ROLL CALL VOTE:

AYES: Commissioners Blank, Narum, Olson, Pearce, and Pentin
NOES: None
ABSTAIN: None
RECUSED: None
ABSENT: None

The Minutes of the January 11, 2012 meeting were approved, as submitted.

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 Planning Commission.

4. **REVISIONS AND OMISSIONS TO THE AGENDA**

Janice Stern advised that with reference to Item 5.a., Tri-Valley Repertory Theatre, she received a call late this afternoon from Cyndi Ladd of the Valley Business Park Owners Association. She explained that the Association had previously provided a letter of approval for this proposed use; however, there is some disagreement over whether or not the information provided by the property owner included the kids' camp proposed by the applicant. She noted that Ms. Ladd indicated that the Association is opposed to the kids' camp and is requesting the continuation of this item as the Association would not be able to provide representatives to come to the meeting this evening. Ms. Stern stated, however, that Association representatives were able to come to the meeting and, with the applicants, are presently trying to work things out outside the Council Chamber as to whether or not they can come up with an affirmative approval of this application.

Ms. Stern stated that the Commission may recall that the Valley Business Park Owners Association had previously opposed uses that included children within the Valley Business Park and that the Commission and staff had indicated at that time that if the Association were to oppose these uses in general, then it should probably seek a modification to the PUD to eliminate those uses. Ms. Stern noted because the Association has not done this, staff has been accepting applications for these types of uses and have evaluated them on a case-by-case basis. She suggested that the item be considered after the second item on the Agenda.

Chair Pentin advised that Item 5.a. will be considered after Item 6.a.

5. **CONSENT CALENDAR**

- a. **P11-0941, Tri-Valley Repertory Theatre**
Application for a Conditional Use Permit to operate a rehearsal studio for theatre events and a kids' camp program during school breaks at 1020 Serpentine Lane, Suite 307. Zoning for the property is PUD-I (Planned Unit Development – Industrial) District.

This item was moved to be considered after Item 6.a.

6. PUBLIC HEARINGS AND OTHER MATTERS

a. PADR-2090, Rodney and Trina Lopez

Application for a modification to a previously approved Administrative Design Review application (Case PADR-2090) for additions totaling approximately 1,118 square feet at 6114 Homer Court to modify Condition No. 8 of City Council Resolution 11-420 regarding a skylight. Zoning for the property is R-1-6,500 (One-Family Residential) District.

Brian Dolan stated that Shweta Bonn is the planner assigned to this project, but because of the nature of the issue and because he has had a lot of involvement in this project and handled most of the dialogue regarding this issue, he would handle the presentation and discussion on this item.

Mr. Dolan gave a brief background of the project, stating that it was a controversial second-floor addition that was approved by the Zoning Administrator and then appealed to the Planning Commission. He noted that mediation was suggested in the middle of that process, but not everyone was interested. He continued that the Commission then approved the proposal, which was subsequently appealed to the City Council. He indicated that before the item went to the City Council, all the parties agreed to go to mediation to resolve the issues. He noted that while the mediation was not successful, a few ideas came up during the discussions regarding mitigating the impacts of the addition. He further noted that while the neighbors essentially remained opposed to the project and were aware that they were not going to prevail, they were interested in the mitigation measures that came up in that dialogue.

Mr. Dolan stated that the house is essentially 95 percent constructed: the structure has been constructed, the exterior completely stuccoed with some detail work still to be done, and some interior work possibly still to be completed. He explained that the condition that has become a problem was where the Lopezes, the homeowners building the addition, were to provide funding for the purpose of providing a skylight to the Perrys who live next door because this construction would constrain the Perrys' view outside and the light available to their front windows.

Mr. Dolan indicated that this condition was not included in the Planning Commission's recommendation but was added to the City Council's recommendation as a condition to address that issue. He added, however, that because of the way the condition was written, different people interpreted the condition differently, and the issue came down to whether or not the Perrys are obligated to put the skylight in before they get the reimbursement from the Lopezes. He noted that there is the introductory sentence that talks about what the purpose is, but there is no direct obligation outlined further on into the condition for the Perrys to actually construct the skylight. He indicated that staff has interpreted that the Perrys are not obligated to put the skylight in and this was the understanding when the condition was written. He acknowledged that the condition can be interpreted differently, and the Lopezes objected to staff's interpretation and asked for a change in that condition.

Mr. Dolan stated that fundamentally, this agreement is about whether the Perrys could take the money and do something else to alleviate the impact to their home. He added that staff did not envision that it would be controversial since the Lopezes were going to be paying out \$2,500 as provided in the condition. He compared it to something similar to a car insurance where, if a claim is filed and payment is made by the insurance company, there is no obligation to fix the damage, and the claimant may choose to live with the damage and keep the money. He recognized that reasonable people can disagree about the language as written and about what is the appropriate intent.

Mr. Dolan stated that the question in front of the Commission now is whether the Commission agrees with staff or whether it believes as the Lopezes do that they should not have to pay any money unless the Perrys actually get a skylight installed. He indicated that this has continued to be a difficult situation between the neighbors and that he hoped the Commissioners would not hear about a lot of other issues that are not germane to this specific question. He advised the Commission to disregard these statements should they arise as the issue at hand stands on its own. He reiterated that staff needs the Commission's decision on staff's interpretation of the condition, and if the Commission interprets it differently, staff has provided some alternative language, which is included in the staff report, that varies a little bit from what the Lopezes are proposing but makes the condition crystal clear.

Commissioner Blank asked staff to explain the origination of the skylight and if it came out of the mediation process.

Mr. Dolan replied that it is his recollection that this became part of the discussion and was actually something the Lopezes proposed when they were trying to do things to change their project or to make their project more palatable. He indicated that it was something the Lopezes offered as the project moved forward to Council, and staff felt comfortable making that a condition and something that would offset the impact of the second-floor addition.

Commissioner Blank stated that he noticed in the City Council Minutes that Councilmember Cook-Kallio asked a couple questions about it in terms of modifying that condition, but the City Council accepted it as proposed by staff. He asked if mediators typically take notes for themselves during the mediation sessions.

Mr. Dolan replied that he did not think there were a lot of notes. He stated that he was at every single one of the mediation sessions and kept notes until it was over; however, he no longer has those notes as the building permit had been issued, and he had no idea something like this would come up. He added that the mechanics of that issue were not discussed during mediation and that, in fact, the mediator did not have anything to do with the writing of the condition as it went to Council. He indicated that the result of the mediation was that an agreement was not reached.

Commissioner Pearce stated that she also read the City Council meeting Minutes and it appeared that the City Council was satisfied with Option 3, which included this condition. She asked Mr. Dolan if he recalled whether there was any discussion at that City Council meeting regarding the skylight condition that was not reflected in the Minutes.

Mr. Dolan replied that at the last minute, there was some question about whether it was necessary to include the skylight condition, and ultimately, it was left in.

Commissioner Pearce inquired if that was a “yes or no” question and not a discussion of the language or the intent of the condition or anything similar.

Mr. Dolan said that was correct.

THE PUBLIC HEARING WAS OPENED.

Rodney Lopez, Applicant, stated that the City Council staff report that came out after mediation had added the skylight and some other options done during mediation but that nowhere in the 140-page report does it mention the use of the funds for anything other than the installation of a skylight. He noted that Mayor Hosterman had stated during the meeting that they could work out the details later on, and this is what they are doing right now.

Mr. Lopez stated that they are not attorneys but that they noticed later that this option, as written, had a loophole in that they were to pay the Perrys up to \$2,500 for a skylight; however, there was no language to make sure the Perrys actually installed a skylight. He indicated that the option was written with the intent that the Perrys would install a skylight because of the issues they had brought up. He noted that when the time came, they questioned the ethics and how the option’s language was intended, that they were hopeful it was not merely monetary with no intent to ever mitigate this issue. He added that they did not want this money to be seen as a bribe or buyout, so they went to the City to try and work it out. He stated that they felt this was not a good precedent to set for the City of Pleasanton and its Community of Character, that any neighbor could hold up a building process just to get a payment without mitigating the issue of concern.

Mr. Lopez pointed out that in the staff report, they have offered an amendment to that option, which they prefer to Option 1, which is also reasonable. He stated that both options have language stating that they will pay the funds for the installation of the skylight once it is installed. He noted, however, that they would like to add tonight two statements which were missing from both options: (1) that after 180 days, if the skylight has not been installed, the funds would be returned to the Lopez family; and (2) that the funds offered is up to \$2,500 based upon some bids, but that it also be based on the actual cost of the actual skylight installed to prevent any bait or switching, in case the Perrys decide to install a skylight other than one of those on the bids, resulting in the Lopezes paying more than what the actual cost of the skylight is.

Trina Lopez, Applicant, noted that the City Council Minutes indicate that, in regard to Option 3, Vice Mayor Cook-Kallio did ask whether or not the Perrys wanted the skylight. Ms. Lopez stated that, in good faith, the intent has always been to install the skylight and that the purpose of the \$2,500 was never for any other usage. She added that this is the reason they are asking the Planning Commission to look at this again. She cited Mr. Lopez's earlier statement that they are not attorneys but residents of Pleasanton who were unfortunately caught in a situation they and the residents of the Val Vista neighborhood never expected would escalate from an Administrative Design Review to the City Council. She stated that she wanted to make sure that the City of Pleasanton and the Planning Division do not set a precedent that the neighbors of anyone looking to build a two-story home could just demand any type of inducement or monetary value for anything without mitigating the issues. She noted that from the very first time they went to the Administrative Design Review hearing, the intent was to mitigate an issue or concern of the neighbors, which they have faithfully done. She added that at the mediation, the Perrys refused all the options they offered, and at the City Council meeting, the option in question was provided in order to appease and be empathetic, given the fact that the Council was going to approve the proposal to build the two-story home. She reiterated her request that the Planning Commission revisit their position that the intent is and was to build the skylight, as was implied in the City Council Minutes by Mayor Hosterman and Councilmember Cook-Kallio, but the language of the condition unfortunately does not mention that intent.

Mr. Lopez stated that he wanted to remind the Commission that this is a residential project and that it is their fund. He noted that during mediation, there were several other options offered for other concerns; and the City Council asked the Perrys to choose among those options, and the Perrys chose them all. He added that he was told specifically that the Perrys chose all the options because the Perrys wanted them to spend more money. He indicated that have spent a lot of money and have gone over their budget to provide the Perrys with the additional options. He concluded that he was glad the City of Pleasanton is not in the car insurance business and assisting in committing a fraud like this, because the City of Pleasanton has a high standard as a Community of Character, which he hoped would play a part in this as well.

Commissioner Olson inquired what options the Lopezes provided along the way.

Mr. Lopez replied that the Perrys' first concern was that when they come out of their house, they would be looking at the two-story wall of the Lopezes' house, which the Lopezes offered to mitigate in three different ways: planting a tree between the two houses, putting a decorative belly-band on the roof to break the length of a straight-up wall, and hiping the roof, again to break down the length of that wall. He noted that the Perrys declined all three options. He added that the three options were not meant to all go together and that the tree alone would take care of the concern, but the Perrys chose all three, and they [the Lopezes] incurred additional costs for the tree, the belly-band, and re-engineering for the hiping of the roof.

Commissioner Olson inquired if all three have been done.

Ms. Lopez said yes. She added that they have the tree but could not plant it because they still had the stucco and ladders around the house and the tree would have been thrashed from the construction.

Mr. Lopez added that again, in good faith, they had had purchased the tree within the time allotted but did not plant it because it would have been thrashed from the construction.

Commissioner Blank noted that the City Council meeting Minutes state Vice Mayor Cook-Kallio as saying that “if the belly band is something the appellants did not necessarily want, she did not want the applicant to incur the added expense.” He asked Mr. Lopez if they had actually gone ahead and installed it anyway.

Mr. Lopez replied that the Perrys had indicated to staff that they wanted all the options.

David Persin, former neighbor, started by saying that he had the most respect for Mr. Dolan and did not say this lightly. He noted that Mr. Dolan has been in a very difficult situation in all this and that while he agrees with the staff report, he disagrees with Mr. Dolan that the background information here is not salient; rather, it is completely relevant. He added that after dealing with this issue for 18 months, he would like to get on the public record:

“My name is David Person and my wife and I were the previous residents of the home at 6209 Robin Court, located directly behind the Applicant’s residence. I am speaking at the request of our friends, the Perrys, as they feel I may be more comfortable than they are at articulating some of the frustration of their situation. I am also speaking to corroborate what was said in the mediation meetings between the parties, which discussion ultimately led to the formulation of the skylight condition. Finally, I’m speaking to set the record straight about the Applicants who continue to try and portray themselves as the victims when in reality they are, and always have been, the aggressors. This is critically important. This is about control and nothing else, and you will hear that when you hear from me on what has gone on and you will hear about what has happened with the Perrys.

“Let me first tell you that this past June, my family and I moved out of the home we had lived in at 6209 Robin Court for the past 16 years, that we put an addition on, that we customized for ourselves, that we put hundreds of thousands of dollars in, because we could no longer live by these people and what they’ve done to our family. We don’t live there anymore. We left our close friends and our neighbors – people that we have loved as part of our family – because we cannot live by those people anymore. My wife has been aggressively approached at our daughter’s elementary school. My wife has been verbally assaulted by Ms. Lopez at her daughter’s dance studio. My wife has been followed in her vehicle by Ms. Lopez and aggressively approached by Mr. Lopez

as she went over to the Perrys' house to pick up their daughter. My daughter has been stared down and verbally accosted – she was nine years old; her birthday is today; she is 10 – at her dance studio and at school by the applicant's children. My son has been stared down by the applicant's son at his middle school, Thomas Hart Middle School. Parents and teachers at both our children's elementary and middle schools have told us that Ms. Lopez has repeatedly discussed the situation at school claiming we were horrible people to put them through the second-story addition appeal process. The applicants video-taped our children, called the police on our 85-year-old uncle sitting in the backyard listening to music, maintaining it was too loud. On multiple occasions, the applicants have pointed their home security cameras in our home's direction and pointed spotlights into our backside windows. The applicants even told the police that we were the people that caused their vandalism and called the news reporters when we were in Louisiana adopting a baby, and our kids had to call us to say there were police and reporters at our doors because we were accused of vandalizing their home and we were not even in the State.

“You would think that anyone in their right mind would have figured out that they got what they wanted from the City Council review process and would settle back in their lives and try and make peace with their neighbors. For some reason, though, they won't. They continue to try and intimidate and instigate. We do not know why. I refuse to watch the quality of my family's life deteriorate, so I chose to alleviate the decision, and we have cried and my wife did not want to go, and I saw what we were getting into and we left that home so we could be in a place that was more peaceful. As I said, we have added on completely. My father added onto our house, built us a beautiful wing on the house for our family and all of our children. We have eight children. We don't live there anymore. Customized specifically, we have murals all over the house that we had designers come portraying our children in their lives with all of our family and their animals. We do not live there anymore.

“When my friends saw me speaking at the City Council meeting on television last time, they said, ‘why did you not speak up?’ ‘Why did you not say what the Lopezes had done?’ I said I chose to take the high road. I did not want to do that tonight. I am going to put it on the table tonight so at least it is on the record for people to see what we all had to deal with. You will hear from the Perrys. They are the ones who got it a lot worse than we do. I hope that hearing about these incidents will lend some background to the issues of control that are going on here because that is all this is about. Over more than a year's time, all of the conditions including one being disputed here were adjusted, evaluated, modified and finally approved. It is not reasonable to allow the Applicants to take yet another bite of the apple. The Applicants were happy enough to accept approved final conditions so as to be able to build their second-story addition. To allow them to now come back and allow them to go through condition by condition to make changes is not fair and if you do not send this message to them, this is exactly what they will do. Their actions are motivated solely by

control. In fact, not only have the applicants not provided payment for the skylight to the Perrys they were supposed to have done with 30 calendar days from receiving the bids on November 2nd of last year, but they have also deliberately failed to comply with the condition to plant landscape screening near the Perrys' home within 45 days of the City Council approval. That was last January. But, as they just said, for some reason they cannot plant there because of garbage cans and things a year later now. They have not done any of them.

“When I talk about control, if you look in the police records for what’s gone on, there have been 54 instances in the past year that the Lopezes have called the police to their home to deal with what’s been going on. There has been no more than 10 calls from any other neighbor; one from my family. The Pleasanton Police have been required to issue citations by the Lopezes. They have told us that. After decades of service never having had done that before, all citations have been dismissed by the City Attorney.

“And last but not least, in the mediation meetings, I want to read this one paragraph that is critically important as far as the intent. As the skylight issue was being discussed, and I was in the mediation meetings and Mr. Dolan was there as well, Mr. Lopez inquired how the process would work. He specifically asked if he would have his own contractor do the work and pay him directly. Mr. Dolan pointed out that if the Applicant’s contractor did the work and there were problems later, the Perrys would be looking to the Applicant’s to remedy the problem. Mr. Dolan told the Applicants that typically in this type of situation, the Perrys would get three bids for the work and the Applicants would write a check directly to the Perrys for the lowest of the three bids but not to exceed their agreed upon maximum. This is the same resolution that was put in by the staff and recommended by the staff for this evening.

“Last but not least, if they’re going to allow this to happen, why do we not just allow the Perrys to come up and dispute every single thing because the Perrys might not have enough money to go from \$2,500 to \$4,000 to put a skylight in.”

Joe Perry, neighbor, stated that his decision to come here a year ago and speak on behalf of their home caused his family dearly. He noted that while they accepted the City’s decision to approve the building, the Lopezes cannot move on; they are consumed with hate and revenge.

Mr. Perry stated that he knew this meeting is supposed to be based on the skylight issue. He told the Commissioners, however, that they have not lived his life or that of his family this past year. He noted that his family has been stalked, harassed, and ridiculed; he had been physically assaulted by these people in front of many witnesses. He added that they live as prisoners in their own home; their children cannot make noises outside, and their dog cannot bark and has to stay inside. He added further that they cannot park their cars the wrong way because the police will be called, just like the 60 times they have been in the past year.

Mr. Perry asked who lives this way and when does it end. He noted that even to this day, the Lopezes have bright lights shining into their [the Perrys'] front room window, and this is because they can and they live by their own rules. He added that this whole skylight issue is just one more way to harass and control his family. He indicated that this was offered and promised to them; the Lopezes knew the terms, it was approved by the City Council; but the Lopezes have waited until the last minute to dispute it so the Perrys can once again go through this whole long and drawn-out process, because this is all a game to them.

Commissioner Narum asked the Perrys if they want a skylight in their house.

TinaMarie Perry replied that they did. She stated that their whole intention has always been to have the skylight but they wanted to wait until the structure was built so they could see exactly how big it was and how much light it was taking away; and given the size of the structure, a skylight would not even make a dent in the light. She invited anybody, just like she told them a year ago, to come and look at their home and see that this structure has destroyed their home; but no one has chosen to actually look at it, stand in her living room, and look at what it has done.

Ms. Perry stated that they got bids for the skylight for \$4,000 and added that right now, they cannot afford \$4,000. She indicated that she did not realize that they can come and modify things like what the Lopezes are doing today. She noted that they had thought about coming back, putting in a new application in, and asking for \$4,000 because they cannot afford that. She added that the Lopezes have not planted a tree in over a year, and the whole intention of the tree and shrubbery was to grow between their homes to block out all this.

Mr. Perry interjected that they are looking at a stucco wall.

Ms. Perry continued that they have asked to have the tree planted and have called Mr. Dolan numerous times regarding this. She noted that the tree would be planted far enough away from the Lopezes' wall that regardless of the building they were doing, it could have been planted, and the workers could just walk around it. She added that if it had been planted then, it could be growing and be huge by now.

Ms. Perry stated that she told Mr. Dolan that after the skylight condition has been included, she knew that the Lopezes were going to come up with something, and sure enough, here they are today. She added that the Lopezes have already planned this to go on and on and on, and the Perrys are going to be punished for coming here today, just as they have been the whole year.

Commissioner Narum asked the Perrys if they want the skylight.

Ms. Perry replied that they would love to have a skylight, but they cannot afford it. She added that if they were to use the money for anything else, it would be use to plant trees

and put an end to this big dispute instead of going on and on and on. She reiterated that she was not aware that conditions could be modified like this, and if she did, there would be numerous things about what the Lopezes have done that she would love to bring back to the Commission to modify; but she would like to end this all herself and go on with their lives.

Commissioner Blank noted that the Perrys provided the bids on November 2, 2011, and the Lopezes would have had 30 days to respond.

Mr. Perry said yes and added that the Lopezes waited until the 30th day to respond.

Ms. Perry noted that everyone knew the language of the condition all along, and no one came forward to dispute it; and now the Lopezes are here asking for a modification, doing the same thing again, which was not a surprise to anyone.

Mr. Lopez stated that he and his wife are shocked and a little beside ourselves on the character assassination association. He indicated that he understands how people can interpret things differently, but this is definitely skewed. He noted that they have called the police on numerous occasions for being harassed, mostly noise complaints of loud music being played late into the night. He added that they do have a videotape of the Perrys' children like the Perrys have been saying, but the Perrys have called them much worse in person.

Mr. Lopez stated that he does a lot of coaching and the Perrys have said in public that he is a child molester, a pedophile, and things like that. He noted that they have shown the police the video they have of him asking the neighbor to please turn down the music at night, and the police have confirmed that there is nothing wrong with the video. He added that there are so many things mentioned about them that he would be spending too much time trying to debunk most of it. He noted that they are the ones being harassed, but they would like to stay with the facts of this case. He added that they did not wait up to 30 days to respond to the bids.

Ms. Lopez stated that as soon as they got the three bids from Ms. Bonn, she immediately contacted Mr. Dolan because she wanted to confirm these were just bids, a piece of paper that indicates exactly how much the skylight would cost and not that the work would be done. She indicated that it took Mr. Dolan 24 hours to get back to her and that he told her that the Perrys did not have to install the skylight. She stated that the intent was to install the skylight in good faith of what the City Council agreed upon as provided in Option 3, and working things out between the Perrys and the Lopezes meant getting together and working out the details specifically with respect to the installation of a skylight. Ms. Lopez continued that when Mr. Dolan informed her that the Perrys could use the fund for other means, they hired an attorney and contacted Mr. Dolan, the City Manager, and the City Attorney. She stated that it took the attorneys two weeks to discuss the matter, and in the final week, they got word from the City Manager that the City Attorney's position was that in order for them to bring this matter

back on the table, they would have to file an appeal, which they submitted a few days later.

Mr. Lopez reiterated that during the City Council meeting, Mayor Hosterman stated that the details did not have to be worked out that night and that they – the Perrys and the Lopeses and not the attorneys – could work it out later. He added that then they got the bids and were informed that the language of the condition does not say that they have to install a skylight.

Ms. Lopez stated that in her opinion, there was never the intent to install a skylight. She noted that the Council approval was given back in February, and the best opportunity for anybody to see the lighting in the home was during the summer months when there is most lighting, at which time the Lopeses' home was already erected. She further noted that they got the bids in November, when typically there is a lot of rain. She added that this never went beyond what the Council had agreed upon that they – the Perrys and the Lopeses – were to work it out.

Rodney Lopez stated, in summary, that they are not saying they are not going to pay. He stated that they will pay the funds as specified in the option, but they want the skylight to be installed first. He added that they felt that during the process, a lot of the arguments were being brought up just to put up obstacles, and they wanted to make sure that if this is a real issue, then the Perrys should take care of the issue and the Lopeses take care of their portion.

Ms. Lopez stated that they are here to mitigate the Perrys' issue and concern about shadowing or shading. She added that they are willing to accept that responsibility by paying up to the \$2,500, but they want it for what the intention is, which is to install a skylight, and not for any other purpose.

THE PUBLIC HEARING WAS CLOSED.

Commissioner O'Connor stated that it is unfortunate that the wording was not a little sharper from the beginning, but nobody anticipated this. He indicated that as the Commission has mentioned in the past, disputes between neighbors, especially next door neighbors, are always difficult. He stated that he believes that in the interest of putting this matter to bed and quieting things down, the wording of the condition should remain with no changes made. He noted that it has been more than a year, and this matter should have come up at the time the condition was written and not this late. He indicated that he originally thought that he would like to see the skylight installed, but now that the construction is all done, the skylight may not be the best solution and there may be other ways to spend the money to make things easier on the neighbors. He indicated that he would not have a problem with the Perrys using the fund for something different. He added that he thinks this matter needs to be put to bed so things can start to heal.

Commissioner Blank stated that he suspects that regardless of whatever decision the Commission takes here, this will probably go to another body for final resolution. He agreed with Commissioner O'Connor that this is an unfortunate situation. He noted that the wording is perhaps not as elegant as it might have been, but he did not think that the wording should be changed.

Commissioner Pearce stated that she agreed with Commissioner O'Connor. She indicated that she read the City Council meeting Minutes to see if there was a discussion about the intent and if there was concern that it might not happen, and she did not see any of that. She noted that this was a 3-2 vote with the Council approving Option 3 which included this condition, and she needs to rely on that. She added that if there had been a discussion about "should" or "shall" or "may" versus "must," then she would be more comfortable going back into the condition; however, given there was no discussion and it was approved, she needs to support that decision.

Commissioner Narum stated that she generally agrees with the Commissioners that considering the intent, the best thing to do at this point is to leave the condition as it is, have the Lopezes make the payment, and get on with this and put it to bed. She noted that she supported this application when it came before the Commission, and she recalled making a comment that of all the neighbors, she thought the one house that was going to be impacted most by this was the Perrys'. She indicated that she was a little distressed to see this come back to the Commission because she believes people should be trying to put the neighborhood back together as best as they can. She stated that the payment needs to be made and that if she were to do anything more, it would be to change the condition to increase the amount to be paid up to \$4,000 since that is what the bids are for.

Commissioner Olson stated that he is not only distressed that this is back before the Commission but also really hurt for all of these people. He indicated that his sense is that there is no trust on either side and likes the idea of the City, in effect, acting as an escrow here. He stated that he thinks the Lopezes should pay the money to show their intent to pay, and the City should hold it. He added that he thinks the Perrys should get the skylight that they say they want and agreed with Commissioner Narum regarding increasing the amount of money to cover the entire cost of installation.

Chair Pentin stated that the term "distress" is pretty well used and added that he feels disappointed that after this amount of time, this neighborhood is still having the problems they are having and the neighbors are having the problems with each other. He indicated that he looks at this a couple of ways: First, when the Lopezes received approval from the City Council, part of that approval was to put aside \$2,500 for a skylight; however, with the time that it has taken to build, maybe from the Perrys' point of view, the skylight is not as necessary as some other modifications that might bring more light into the house. He noted that is the Perrys' choice because of the way the Council worded the condition. Second, the other side, is that the Lopezes agreed to pay \$2,500, whether it be put in escrow or that the skylight has been put in. He noted that that was the City Council's decision and he does not want to change that. He

stated that he agreed with Commissioner Narum and Commissioner Olson if he were leaning in any direction, it would be that if the Lopezes want to change, they can do one of two things: they can pay the \$2,500 for the skylight as per the Council's decision, or the Commission can take one of the three bids and the Lopezes can pay that amount and have the skylight installed.

Commissioner Blank moved to make no changes to the conditions in City Council Resolution No. 11-420, attached as Exhibit A to the staff report, with the understanding that the Perrys may use the \$2,500 payment by the Lopezes for a skylight or other purposes.

Commissioner Peace seconded the motion.

ROLL CALL VOTE:

AYES: Commissioners Blank, Narum, Olson, Pearce, and Pentin
NOES: None
ABSTAIN: None
RECUSED: None
ABSENT: None

Resolution No. PC-2012-04 denying the modification was entered and adopted as motioned.

Item 5.a. P11-0941, Tri-Valley Repertory Theatre

Application for a Conditional Use Permit to operate a rehearsal studio for theatre events and a kids' camp program during school breaks at 1020 Serpentine Lane, Suite 307. Zoning for the property is PUD-I (Planned Unit Development – Industrial) District.

Chair Pentin recused himself due to a conflict of interest.

Ms. Stern indicated that after some discussion among themselves, the Valley Business Park Owners Association (VBPOA) Boardmembers, who were present earlier but have since left, have reached an agreement and indicated that they can again back the approval of this application; hence, there is no disagreement between the VBPOA and the applicant.

Commissioner Pearce moved to make the required conditional use findings as described in the staff report and to approve Case P11-0941 subject to the conditions listed in Exhibit A of the staff report.

Commissioner Narum seconded the motion.

ROLL CALL VOTE:

AYES: Commissioners Blank, Narum, O'Connor, Olson, and Pearce
NOES: None
ABSTAIN: None
RECUSED: Chair Pentin
ABSENT: None

Resolution No. PC-2012-05 approving Case P11-0941 was entered and adopted as motioned.

Chair Pentin returned to the dais.

7. MATTERS INITIATED BY COMMISSION MEMBERS

Materials for Planning Commission and City Council Public Hearing Item

Commissioner Blank referred to the staff report for the public hearing and indicated that he does not recall having the nice visual simulations when the item came to the Commission.

Commissioner O'Connor agreed.

Commissioner Blank stated that it is often commented at the Planning Commission that with the ability for everyone to appeal things *de novo* for no reason at all, oftentimes, applicants come to the Planning Commission with a presentation, but the applicants know it is not for real and would go to the City Council. He noted that in those cases, certain information get presented to the City Council that do not get presented to the Planning Commission, such as really nice visuals and graphics. He requested that perhaps staff can make sure this does not become a trend down the road.

Mr. Dolan replied that this is a legitimate request and that this case was a unique situation. He noted that this went on for a very long period of time, and a lot of issues were discussed in between. He added that the Commission will recall that originally, the Lopezes were unwilling to participate in the mediation but were strongly advised after the Planning Commission action that they should and they ultimately agreed.

Commissioner Blank noted that it was interesting how at one meeting, Mr. Dolan provided an estimate of the cost of story poles versus the ultimate costs, and that was a valuable lesson. He indicated that he appreciated Mr. Dolan's recognition of his request and thinks that Mr. Dolan provided sage advice on a complicated matter.

Allotted Time for Speakers

Chair Pentin stated that he would like to bring up the time allotted for speakers during public hearings. He noted that the Planning Commission has allows ten minutes for the

applicant or appellant and another ten minutes for the appellant or applicant, and five minutes for public speakers. He indicated that he thinks that is fine when the Commission does not have a large agenda or a controversial issue with a room full of people, but when there is a large agenda or a room full of people and a lot of speakers, he would like to limit the speakers, other than the applicants or appellants, to three minutes each. He pointed out that the City Council does this and that on the Bicycle and Pedestrian Trials Committee, the audience who would like to comment on items not listed on the agenda are encouraged to limit their comments to three minutes. He commented that the Commission usually gets a lot of the same discussion over and over, and people want to pound the same message across. He added that the other side is that it is very hard to keep those speakers to five minutes, so if they are given three minutes, they will probably end up with five minutes.

Commissioner Narum stated that the Commission has done that routinely. She noted that as Chair, she did it for the Housing Element Update meetings.

Commissioner O'Connor agreed that it has been done before.

Chair Pentin stated that he did not want to start it without first informing the Commissioners and that he just thinks it is important to have that flexibility. He noted that he did not do it tonight but that he will also try to keep comments to five minutes.

Commissioner Blank noted that he thinks Chair Pentin did that well.

Commissioner O'Connor asked Chair Pentin if he stated that the applicant gets ten minutes, everybody else gets five minutes, and the applicant comes back for another ten minutes.

Chair Pentin clarified that when there is an appellant and an applicant, both receive ten minutes each, and when they are given the chance to come back, they receive five minutes. He noted that that is what he did tonight for the Lopezes.

Commissioner Blank asked Ms. Harryman if there is any case law in California that reflects if three minutes is reasonable in terms of public comment and what happens if the Commission decides to make it two minutes or five minutes.

Ms. Harryman replied that she was not certain but that she could look into it. She added that she knows cities vary in the amount of time and that from her own experience, she does not know of many cities that allow less than three minutes. She noted that usually three minutes is the minimum; the Commission could probably go less than that but she is not suggesting that.

Commissioner Blank inquired if that would be difficult to research.

Ms. Harryman replied that her preference would be that if the Commission is interested in limiting it to below three minutes, then she would research it.

The Commissioners said no.

Commissioner Blank agreed and stated that it was simply a curiosity question.

8. MATTERS FOR COMMISSION'S REVIEW/ACTION

a. Update on the El Balazo Restaurant CUP, September-December 2011

Commissioner Narum noted that the report looks great and looks like the owners have got their business activities under control.

Commissioner Pearce stated that it appears the Commission has received enough information to show a good pattern and, noting that preparing the report can be extremely taxing to the Police Department, proposed that the reports no longer be required.

The Commission unanimously agreed.

b. Future Planning Calendar

Mr. Dolan reminded the Commission that the joint workshop with the City Council will start at 6:00 p.m.

Commissioner Olson inquired what the date of the workshop is.

Mr. Dolan replied that it is scheduled for February 8, 2012.

c. Actions of the City Council

No discussion was held or action taken.

d. Actions of the Zoning Administrator

No discussion was held or action taken.

9. COMMUNICATIONS

No discussion was held or action taken.

10. REFERRALS

No discussion was held or action taken.

11. MATTERS FOR COMMISSION'S INFORMATION

Commissioner O'Connor stated that he attended the Pleasanton Downtown Association (PDA) meeting this morning and that the PDA was surprised that there was actually going to be a Historic Preservation Task Force. He stated that PDA members indicated that they met with Planning staff sometime late last year and were told that there was no intent to change any City codes. He continued that they were asking who from the Council and the Commission were on the Task Force and that they were concerned they did not receive any notification. He added that the PDA should be represented since the PDA is part of the Downtown, and the Downtown is part of the historic area.

Mr. Dolan replied that the matter was on the City Council agenda twice.

Commissioner Pearce stated that she and Commissioner Blank are on the Task Force, there is no one from the Council, and there are five at-large members. She added that the PDA members are welcome to contact her or Mr. Dolan.

Commissioner O'Connor noted that the PDA can attend the meetings because they are open and that he just wanted to make sure that staff notifies PDA of the Task Force meetings.

Commissioner Blank advised for the record that the first meeting will be on February 23, 2012 at 6:30 p.m.

Commissioner Pearce stated that it would be held in the Century House on Santa Rita Road.

Mr. Dolan stated that an alternate location is being considered for subsequent meetings, but the first one will be at the Century House.

Commissioner Narum commented that the location is totally appropriate for historic meetings.

12. ADJOURNMENT

Chair Pentin adjourned the Planning Commission meeting at 8:12 p.m.

Respectfully,

JANICE STERN
Secretary