



PLANNING COMMISSION MEETING MINUTES

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

APPROVED

Wednesday, June 8, 2011

(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 June 8, 2011, was called to order at 7:00 p.m. by Chair Kathy Narum.

PLEDGE OF ALLEGIANCE: The pledge of allegiance was led by Chair Narum.

1. ROLL CALL

Staff Members Present: Janice Stern, Planning Manager; Julie Harryman, Assistant City Attorney; Steve Otto, Senior Planner; Jenny Soo, Associate Planner; Natalie Amos, Associate Planner; and Maria L. Hoey, Recording Secretary

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

Commissioners Absent: None

2. APPROVAL OF MINUTES

a. May 11, 2011

Commissioner Pentin moved to approve the Minutes of the May 11, 2011 meeting, with the two revisions submitted by Commissioner Blank at the May 25, 2011 meeting.

Commissioner Olson seconded the motion.

ROLL CALL VOTE:

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

The Minutes of the May 11, 2011 meeting were approved, as amended.

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

There were no revisions or omissions to the agenda.

5. CONSENT CALENDAR

- a. Adoption of a resolution finding that the Capital Improvement Program for FY 2011 through FY 2014 is consistent with the City General Plan**
- b. PCUP-297, Jay and Indumathy Ganesh, Nrithyollasa Dance Academy**
Application for a Conditional Use Permit to operate a dance studio at 4430 Willow Road, Suite K. Zoning for the property is PUD-I/C-O (Planned Unit Development – Industrial/Commercial-Office) District.
- c. PCUP-298, Irvin Jones, Faith Community Worship Center**
Application for a Conditional Use Permit to operate a religious facility within two tenant spaces located at 6642 and 6644 Owens Drive. Zoning for the property is PUD-I/C-O (Planned Unit Development – Industrial/Commercial-Office) District.

Commissioner Blank moved to make the finding that the proposed Capital Improvement Program is consistent with the General Plan; to make the required Conditional Use Permit findings as listed in the staff report and to approve Case PCUP-297, subject to the conditions listed in Exhibit A of the staff report; and to make the required Conditional Use Permit findings as listed in the staff report and to approve Case PCUP-298, subject to the conditions listed in Exhibit A of the staff report.

Commissioner Olson 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-2011-11 finding that the Capital Improvement Plan is consistent with the General Plan, Resolution No. PC-2011-12 approving Case PCUP-297, and Resolution No. PC-2011-13 approving Case PCUP-298 were entered and adopted as motioned.

6. PUBLIC HEARINGS AND OTHER MATTERS

a. PRZ-59/PDR-965/PTR-7534, Lynn Jansen

Applications for: (1) rezoning approximately three acres of the existing approximately four-acre site at 1623 Cindy Way from the A (Agriculture) District to the PUD-MDR (Planned Unit Development – Medium Density Residential) District; (2) Design Review approval to construct an approximately 2,720-square-foot two-story home with an approximately 580-square-foot attached garage at 1619 Cindy Way (Lot 9, Tract 7534); and (3) modifying a condition of approval for Tract 7534 to allow the continued use of the existing driveway to 1623 Cindy Way. Zoning for the property located at 1623 Cindy Way is A (Agriculture) District and PUD-MDR (Planned Unit Development – Medium Density Residential) District, and zoning for the property located at 1619 Cindy Way is PUD-MDR (Planned Unit Development – Medium Density Residential) District.

Also consider the Negative Declaration prepared for the project.

Jenny Soo presented the staff report and described the scope, layout, and key elements of the proposal.

Chair Narum inquired what the height of the house is.

Ms. Soo replied that it would be 24 feet tall. She added that the Design Guidelines allow a maximum height of 24 feet for single-story homes and 32 feet for two-story homes.

Commissioner Pentin inquired what would happen to the swimming pool when the existing house is moved and if there were any environmental issues associated with the pool.

Ms. Soo replied that the pool and the septic tank will be removed per the requirements of the Alameda County Health Department. She added that existing utilities were

hooked up with the development of the Roselyn Estates, and, therefore, it would be easy for this project to tap into those utilities.

Commissioner Blank inquired if the Fire Department will need to weigh in on the driveway or if the Department has already deemed it to be sufficient.

Ms. Soo replied that the Fire Department has already reviewed the driveway.

Commissioner Blank inquired if this project will come back to the Commission in terms of layout.

Ms. Soo replied that it would come back to the Commission when the PUD application is filed.

Commissioner Blank inquired if it would have a Homeowners Association rather than a Maintenance Association.

Ms. Soo replied that it would be a Homeowners Association as there is a creek at the back that would need to be maintained.

Commissioner Olson referred to the last sentence of the indented paragraph on page 10 regarding the 20-foot easement located on the westerly boundary of the property: *"In the event that the Jones property is developed, the exclusive access easement will be required to be extinguished unless it is allowed to remain by the City Attorney and City Engineer."* He inquired what this means in relation to the "Conceptual Lot Layout of a Future PUD Development Plan" on page 11, which he found to be reasonable in terms of running the road around the perimeter of the property, thereby providing access to all of the new lots without coming through the driveway. He inquired if the language on page 10 negates the layout plan or if this is simply the form of an escape clause.

Ms. Stern replied that the language is to provide access only to the one home and not to any of the homes in the new PUD.

Ms. Harryman explained that Condition No. 24 of the original PUD approval provides that the applicant would have to give up the driveway, the thought behind it being to have all of the lots take access off of Calico Lane. She noted that with the house moving over closer to Cindy Way, it makes sense to keep this driveway, and the purpose of this language then is to allow this driveway to remain.

THE PUBLIC HEARING WAS OPENED.

Lynn Jansen, owner/applicant and the builder and developer of the prior Roselyn Estates as well as of the future Phase 2 of the Roselyn Estates, stated that he would like to speak on two points: the easement and the new home.

Mr. Jansen stated that the easement is simply a question of semantics. He pointed out that he will be submitting a request to vacate the easement because a full legal deeded frontage will be provided on Cindy Way for the new lot for the relocated home, which will then render the easement issue moot. He explained that originally, the clause was a direct consequence of the Jones' family submission for the 20-foot easement to be expanded and become the main traffic access thoroughfare for the future developed Roselyn Estates development. He indicated that he had requested Planning staff at that time that this not become a street entrance; hence, the clause was added that when the Jones' property develops in the future, the easement will be extinguished. He reiterated that he would like to keep the original intent in place that this not be allowed to become a traffic road for the future homes to be built, but remain a single driveway access to the home. He added that the easement can eventually be extinguished because a new 40-foot wide frontage will be installed on Cindy Way.

With respect to the new home, Mr. Jansen stated that the home is being relocated to set the stage for the future development. He noted that this will be green building to the fullest extent since he will be retaining the home and not be dumping materials in the landfill. He explained that the home will be re-wrapped with all new siding, trim, windows, paint, and gutter to match the existing Roselyn Estates home and provide good continuity. He added that he has also obtained unanimous Homeowners Association (HOA) support for the relocated home.

Commissioner Pearce asked Mr. Jansen what kind of outreach he has done with the neighbors.

Mr. Jansen replied that at this stage, he has brought information to the HOA Board of Directors on the relocation of the Jones' house, which is the only current thing now affecting the HOA. With respect to future development, he indicated that the outreach will be extensive in that the draft and future plans will be presented to the HOA and to residents of Calico Lane and other neighbors off of Rose Avenue.

Commissioner Pearce verified with Mr. Jansen that he has plans to talk to the neighbors on Cindy Way and Calico Lane regarding what is going on with the future development.

Mr. Jansen said yes.

THE PUBLIC HEARING WAS CLOSED.

Commissioner Blank moved to find that the rezoning is consistent with the General Plan and will not have a significant effect on the environment, and to recommend approval to the City Council of the Negative Declaration and Case PRZ-59; to approve PDR-965, subject to the conditions listed in Exhibit A-1 of the staff report; and to approve the modification of Condition No. 24 of PTR-7534, subject to the conditions listed in Exhibit A-2 of the staff report. Commissioner Pentin seconded the motion.

Commissioner Blank inquired if staff should be requiring a specific disclosure that because of the Fairgrounds' close proximity, there would be noise and parking impacts.

Ms. Stern replied that staff can consider this for the future PUD.

Commissioner Blank referred to Conditions Nos. 5 and 6 of Exhibit A-1 and noted that he does not remember having the specific condition requiring at least one appliance that meets Energy Star standards. He inquired if this is something new.

Ms. Stern replied that both conditions came from the General Plan.

Chair Narum inquired if these conditions will now become standard conditions on any new construction.

Ms. Stern said yes and noted that there may be more conditions when the Climate Action Plan is adopted.

ROLL CALL VOTE:

AYES: Commissioners Blank, Narum, Olson, Pearce, and Pentin

NOES: None

ABSTAIN: None

RECUSED: None

ABSENT: None

Resolution No. PC-2011-14 recommending approval to the City Council of the Negative Declaration, Resolution No. PC-2011-15 recommending approval to the City Council of PRZ-59, Resolution No. PC-2011-16 approving PDR-965, and Resolution No. PC-2011-17 approving the modification to a condition of approval for PTR-7534 were entered and adopted as motioned.

b. PCUP-296, Summer Time Learning Center

Application for a Conditional Use Permit to operate a State-exempt child care learning center at 1020 Serpentine Lane, Suite 109, during the summer only. Zoning for the property is PUD-I (Planned Unit Development – Industrial) District.

Commissioner Pentin recused himself from participating in the discussion as he has a conflict of interest due to the proximity of his business to the project site.

Natalie Amos presented the staff report and described the scope, layout, and key elements of the proposal.

Commissioner Olson requested confirmation that the building outside of the two circles showing the 300-foot radius around the project site and the existing Quarry Lane School is also owned by the party who wants to put the cell tower inside the circles.

Ms. Amos said yes.

Commissioner Blank indicated that he did not see a letter from Valley Business Park (VBP) in his packet and inquired if there was one.

Ms. Amos replied that it is an email and is attached to the staff report as Exhibit E.

Commissioner Pearce inquired why staff considers this a day care as opposed to a tutoring facility, and if this is because of the number of hours or the age of the children.

Ms. Stern replied that this is mostly due to the age of the children: pre-kindergarten, kindergarten, and first grade children are not usually into academic tutoring.

Commissioner Pearce indicated that she would like to ask the applicant if kindergarten readiness is not considered tutoring. She noted that she is aware this is done a lot here.

Commissioner Pearce continued that she recognizes that CC&Rs are essentially a contractual relationship of which the City is not a party. She pointed out that there was mention of start dates and requested clarification from staff that, should the Commission approve the use, the applicant cannot start if the Business Park does not allow the business to move in.

Ms. Harryman explained that the applicant would have City approval, and the private parties would decide how to enforce it. She added that if the business owners do start, one possibility would be for VBP to file an injunction stating that this is in violation of its CC&Rs.

Commissioner Blank stated that he thought the CC&Rs allowed the use with a Conditional Use Permit, which is issued by the City.

Ms. Harryman explained that the difference is that the PUD zoning for the property states that this type of use is allowed with a Conditional Use Permit, but VBP's private CC&Rs state that this kind of use is allowed subject to the approval of the Architectural Review Board, which did not approve it. She added that the City only looks at its own zoning provisions and applies those.

Considering if this application were called a tutoring facility, Chair Narum inquired if the Longshore Tutoring Center had a Use Permit at that site and whether it could be used by Summer Time Learning Center.

Ms. Amos said yes.

Ms. Stern added that the application would need to be consistent with all the conditions. She indicated that she is not certain if Longshore Tutoring Center had age limitations either.

Ms. Amos noted that Longshore Tutoring Center's hours of operation were different and it had a greater number of students that would be there. She continued that the ages of the children were different as well; the students were not as young, and some actually went to high school. She indicated that there was also a bit of difference in terms of their business practices.

Chair Narum inquired if Longshore Tutoring Center had more than the 15 students maximum.

Ms. Amos replied that there is no maximum number of students for this specific PUD. She explained that the maximum number of students for straight-zoning designation sites without a Conditional Use Permit is 20. She added that it is different for PUDs, where a Conditional Use Permit is required no matter the number of students.

Chair Narum inquired if she remembers how many students Longshore Tutoring Center was permitted to have.

Ms. Amos replied that she believes it is 40.

Ms. Stern added that staff felt there might be some additional conditions the Commission may want to apply for this younger age group.

THE PUBLIC HEARING WAS OPENED.

Bryan Bowers stated that he is the building owner with his family, and his wife, Summer, is the applicant. He indicated that they wanted to open up the learning center for the summer to fill the need at the time for the Pleasanton area, since most of the summer school programs have incurred budget cuts. He stated that they looked at the zoning and saw that it was a Conditional Use. He noted that they attempted to get an approval from the VBP Owners Association, and when he talked to the Board, the members expressed concern over the safety of the children.

Mr. Bowers stated that other child-based businesses within VBP are normally located in a pure industrial area next to a truck door or roll-up door. He added that while the entire VBP is zoned Light Industrial, there are two pure office buildings in VBP, one of which is theirs. He said they own 1020 Serpentine Lane, and 1024 Serpentine Lane next door is an office building with no truck doors, no forklifts driving around. He added that the two buildings share a common driveway and parking lot, and they do not see any danger there for children like there may be in other spaces in the Park where there are roll-up doors, truck doors, and forklifts driving in and out.

Mr. Bowers requested the Commission to approve the learning center in the office building within VBP as the City's zoning allows it as a Conditioned Use.

Commissioner Pearce asked what sort of program they will be offering for the pre-kindergarten children.

Mr. Bowers replied that they would be offering group learning activities. He suggested that his wife would be in a better position to answer the question.

Commissioner Blank stated that he serves on the Board of Directors of a homeowners association and that normally, their association encourages its members to obtain the approval of the association before going to the City. He noted that sometimes homeowners who go to the City first and get approval get carried away and start working without the approval of the homeowners association, which could result in messy court cases. He asked Mr. Bowers why he came to the Commission without having the approval of the owners association, which is the reverse order of things.

Mr. Bowers replied that they asked the owners association for approval but were denied.

Commissioner Blank asked Mr. Bowers if he realizes that the Commission cannot grant him that approval.

Mr. Bowers replied that he understands that. He added that they are looking for approval by the City, and if the owners association has a problem with it, they will deal with that when they have to.

Summer Bowers, applicant, stated that she has been a highly-qualified credentialed teacher for 12 years and has actually worked in Pleasanton and Castro Valley. She added that she worked with the Pleasanton School District through its wonderful program which coaches and helps new teachers to be certified.

Ms. Summers stated that the idea behind Summer Time Learning is to provide an essential piece that is missing in children's learning and education over the summer. She indicated that she wanted to start small with keeping pre-kindergarten and first grade students, providing them with a schedule and routine in a learning environment. She added that pre-kindergarten learning is not a one-on-one tutoring but rather, a participation in overall kindergarten readiness within a group environment involving group story time, cooperative learning, working with colors and shapes, and sitting quietly.

David Wensky, newest member of the Architectural Review Board (ARB) of Valley Business Park, stated that he has lived in Pleasanton for 25 years and owns two properties in VBP. He indicated that there are two other Board members in the audience who will speak about the issue brought forward earlier by Commissioner Blank regarding why the applicant is before the Commission tonight.

Mr. Wensky stated that about a year ago, he was in the same position as the applicant with respect to a tenant who wanted to locate his business in VBP and needed a Conditional Use Permit from the City. He noted that the tenant went through the process and received approval from the ARB prior to going to the City for a Conditional Use Permit. He pointed out that that is not what is happening with this applicant. He added that the other reason he is here tonight is because things have occurred in VBP that the Board is not happy with in terms of who has been allowed to establish businesses in what is considered to be a Light-Industrial business park.

Chris Studzinski, Vice President of the VBP Association and a member of the ARB, stated that he has copies of the VBP CC&Rs, which he distributed to the Commissioners, that are different from what is attached to the staff report as Exhibit D. He referred to Uses and Operation on page 18, which states that if either of this declaration [CC&Rs] or set ordinance [Pleasanton Zoning Code] is more restrictive than the other, the more restrictive of the two shall apply. He pointed out that the City approved the CC&Rs as part of the 1980 conditions.

Mr. Studzinski then directed the Commission to Section 3.2, Subsection N, which lists the conditionally allowed uses if specifically approved by the Architectural Review Board. He noted that this is what is different from what staff included in the report as Exhibit D, which is really Exhibit A, as noted on the bottom of the page, which was used in another session as the original PUD-80 conditions, and which skips the section about the ARB. He added that ARB's first reaction was that this is not a trade school, the kind of school allowed and listed on p. 21 of the CC&Rs. Mr. Studzinski emphasized that this application is in violation of the VBP CC&Rs and, as a member of the Board, he needs to uphold them because other people complain if the Board does not do its job. He asked the City to respect this provision of the CC&Rs.

Chair Narum asked Mr. Studzinski how long he has been a member of the VBP Board and the ARB.

Mr. Studzinski replied that he has been in both for one year.

Chair Narum stated that she senses that there is opposition to having businesses that include children's activities as part of the PUD and CC&Rs. She asked Mr. Studzinski why VBP has not considered applying to the City to have the PUD modified.

Mr. Studzinski replied that this is something they can consider later on because of the costs. He added that they are simply looking at the CC&Rs and where they are right now. He noted that if it is a daycare, it can technically be in there; however, he does not think it can be considered a daycare because the applicant will be teaching first grade.

Ms. Amos noted that Exhibit D has the same language as the CC&Rs. She read the same texts referred to earlier by Mr. Studzinski on p. 18 and Subsection N regarding the requirement for ARB approval of conditionally allowed uses. She informed the

Commission that the CC&Rs, Exhibit D of the staff report, is the same as what Mr. Studzinski earlier distributed to the Commissioners.

Mr. Studzinski stated that the staff report he received from the City does not include the CC&Rs. He noted that it shows the Neighborhood and Support Commercial Uses, with conditionally allowed uses listed under "N" with no reference to the ARB.

Ms. Amos clarified that Mr. Studzinski is looking at a separate attachment and that it appears that he did not have Attachment D, which is the CC&Rs, which is 85 pages long. She explained that she was simply clarifying that the Commission received a copy of the CC&Rs.

Mr. Studzinski stated that he was just going with what he received, which has Exhibit E following Exhibit C. He questioned why he does not get to see a copy of Exhibit D.

Commissioner Blank and Chair Narum assured Mr. Studzinski that the Commissioners received a copy of the CC&Rs.

Thomas Stone, President of VBP and a member of the ARB, stated that he has been on the Board for over ten years and has been the President for three years. He indicated that he owns two units in VBP. He then reviewed the VBP process, noting that the use must go through the ARB first, and if approved, goes to the City for Use Permit approval. He added that if the City approves the application but the ARB denies it, the only recourse the Board has is to call the business in to a VBP Board Meeting and ask the business owner to cease and desist the operation of the business, and if the business owner refuses, the next order is to obtain an injunction and start daily fines.

Mr. Stone stated that he understands people have legitimate businesses, but there are problems in VBP with past Boards and review boards allowing children-based businesses to operate, which has created a hazard. He noted that UPS and FedEx drivers pass through the back side of the building, and they are not looking for kids. He also noted that parents drop off their children at any place in the parking lot to attend their piano or dance classes, and there have been near accidents with children getting hit. He indicated that this is the basis of the Board's decisions regarding schools and children in a Light Industrial business park.

Chair Narum inquired, if there is a concern with children activities, if the Board has discussed filing a modification to the PUD to remove these activities from the list as conditionally approved uses.

Mr. Stone replied that they have discussed this matter with the VBP attorney who looks out for the interest of the VBP owners. He noted that it would involve a lot of work, would cost a lot of money to rewrite anything in the CC&Rs, and would require a majority vote of all business owners in the Park. He pointed out that it would be a bit easier with the ARB having the final say and implementing its decision, and hope that the City works with them. He noted that they have been dealing with the City for the

past year-and-a-half to make staff understand how their system works to make the Park a safe place for these businesses to operate.

Commissioner Olson noted that Mr. Stone made reference in his presentation to some businesses in the Park that cater to children, such as piano and dance lessons. He asked Mr. Stone if VBP has instituted proceedings relative to moving these businesses out of the Park.

Mr. Stone replied that they are sitting in a predicament as these businesses are in and they cannot just require them to move out. He noted that what they plan to do is once these tenants leave, they will not allow them to be replaced with child-based businesses. He added that the Jazz N Taps school has ran-out Aloha Cabinetry because of noise coming out of their building and that they have also lost an industrial business over a child-based business.

Commissioner Olson commented that he presumed these businesses were given approval based on VBP's CC&Rs which he assumed were in place when these businesses came in.

Mr. Stone replied that they had a conditional use, and the past President and Boards had made the adjustments. He stated that it is tough for the present Board to allow all child-based businesses to come in because one is already in, and keep making the same mistake. He noted that the Board is trying to clean up this Park to make it safe for people running light industrial businesses to operate inside the Park. He added that their main concern is the safety of the children.

Commissioner Pearce stated that she recalls approving some child based uses in VBP and expressed concern about what Mr. Stone has mentioned about children running through the parking lot or not being dropped off properly because the Commission has instituted many conditions on these businesses to mitigate some of the safety concerns. She asked Mr. Stone if there have been instances of these problems that the Board has brought to the City's attention because the Commission has not been informed about them.

Mr. Stone replied that he did not know the Board was supposed to report these incidents to the City. He noted that an incident was reported on Tuesday about a gym business in the Park where parents were dropping off children on the other side of the parking lot and having them run through other parking lots and across garden medians. He stated that he would talk to Cyndi Ladd, Director of the property management for VBP and have her send a memo to the City each time this issue comes up so the Commission will be kept informed.

Commissioner O'Connor commented that he is a member of four associations, two of which he is the President. He noted that it is fairly easy, if the Association does not wish to rewrite its CC&R's which usually requires an attorney, to add to or eliminate from the CC&Rs any use or paragraph by a simple majority vote of the membership,

which would then amend the CC&Rs; for example, if the Association's stand is clear that it does not want any daycare center or child-based businesses that are clearly conditionally allowed in the CC&Rs.

Chair Narum stated that the PUD could also be modified.

Commissioner O'Connor clarified that the PUD modification would be from the City's approval process while this would be an action the Association could take.

Commissioner Blank cautioned regarding providing legal advice to the owners association regarding the right methodology for them to modify their CC&Rs or PUD modification.

Commissioner O'Connor clarified that he is not providing legal advice. He noted that one of the speakers stated that it is very difficult and costly to modify documents, and he [Commissioner O'Connor] is simply saying that there are other ways to modify the document. He reiterated that this is different and separate from how the City would modify its approval process.

Mr. Stone indicated that he would be more than happy to bring this matter of making a modification before the Park's management association.

Commissioner O'Connor asked staff how expensive it was to do a PUD modification.

Ms. Stern replied that it depend on whether it would be a minor modification, which would be \$100, or a major modification, which would be \$2,000. She added that it would also depend on whether the modification would be processed at the staff, Planning Commission, or City Council level.

Commissioner Blank noted that the City fee may cost only \$100, but it would also entail legal preparation work which will involve additional costs.

Chair Narum noted that a daycare is conditionally allowed by VBP, and three speakers representing the Park have expressed concerns about that; however, if an applicant walks into the City and applies for a daycare, the City would have to process it.

Mr. Stone stated that the City approved the CC&Rs some 20 years ago and inquired if it would have to come back to the City for approval if it were to be modified.

Chair Narum said yes and clarified that it is part of the process.

Commissioner O'Connor inquired if the City actually approves CC&Rs.

Ms. Harryman replied that when the City reviews CC&Rs, it makes sure that the City has the right and not the obligation to enforce them, for example, that the Association cannot change the maintenance obligations that the City requires. She noted that the

City does not get into details such as how the association is made up and what the voting rights are.

Chair Narum clarified that the City reviews PUD modifications.

Ms. Harryman said yes.

Jerry Hodnefield indicated that the statement made that Aloha Cabinets was driven out of the Park by Jazz N Taps is twisted and further from the truth. He noted that he owns the building occupied by the dance studio, and while Jazz N Taps is the primary tenant, he was not crazy about having the cabinet shop in his building.

Mr. Hodnefield stated that his company, Devcon Construction Company, was involved with a lot of the original construction of the project 25 years ago, as well as with the development of the CC&Rs at that time. He indicated that when these buildings were originally developed, most were occupied by tenants who made things, producing goods and services needed by the growing industrial community in Pleasanton. He noted that it appears nothing is made anymore in this country; the community is evolving and changing, and the buildings are moving from manufacturing uses to companies that provide services, including those which provide services for young people.

Mr. Hodnefield stated that VBP is an infill business park surrounded by a community, and as a result, community services tend to move into the Park because the alternative is to go into commercial locations where rents are higher, and there is no reason for service-oriented businesses, such as Jazz N Taps and Child Links, to be in those areas. He added that he has several child-oriented tenants in the building who tend to be great tenants, who require very little parking, and whose children are very much under control as far as they can determine. He noted that his offices are on-site and that if there were any problems, he would surely know about it.

With respect to UPS traffic, Mr. Hodnefield questioned if there were any buildings in the City that do not have any UPS drop. He stated that this is the only kind of traffic they have; they have no truck doors. He added that he has two dance studios and a lab as tenants, which are considered office uses in buildings that are different and separate from the other buildings developed in the Park.

Mr. Hodnefield stated that the uses of the Park are changing, and it is becoming difficult to get tenants today that fulfill the role for which the Park was originally constructed. He indicated that, as landlords, they tend to do things to generate more service-oriented tenants than it has ever been in the past, and child-based businesses should continue to be allowed. He noted that the Board of Directors and CC&Rs change, and many of the rules established through the CC&R's are arbitrary and subjective and can be interpreted a number of different ways. He encouraged the Commission to approve this request.

Commissioner Blank asked Mr. Hodnefield which buildings he owns.

Mr. Hodnefield replied that he owns five buildings in the Park, one of which he owns with his children, which is the subject building; the building two doors down which is occupied by two service-oriented tenants; and the two buildings on the very end.

In response to an earlier question regarding why the applicant came to the Commission, Mr. Bowers stated that they originally tried to work with the Association, and all the objections given involved child safety issues with roll up doors and truck doors. He indicated that he tried to explain how their building is different, but it did not go anywhere, and they that there was no other place to go to get the issue resolved so they decided to take it to the Commission. He noted that they understand the concerns about safety, but their office building is entirely different because it does not have roll-up doors or truck doors, and no heavy equipment travel in that area. He added that the Board can discuss modifying the CC&Rs to remove child-based businesses, but it is a light industrial park and has office buildings, and he would like to put office uses there, which is the type of uses that fits in. He noted that removing this type of use would take away potential tenants that they can have in their building. He reiterated that they can understand the safety concerns for multi-tenant industrial buildings, but they believe these uses are a good fit for an office building.

Commissioner Blank clarified with Mr. Bowers that he came to the Commission because they were not making any progress with the Association regarding their application.

Mr. Bowers said yes. He noted that they felt they could not have a reasonable discussion with the Association, and they just wanted to proceed with the process and keep it moving. He added that however this works out, they would then get back with the Association.

Commissioner Blank asked Mr. Bowers how the City's approval would help with this.

Mr. Bowers replied that if they get approval from the City, they will open the business.

THE PUBLIC HEARING WAS CLOSED.

Commissioner Blank recalled that a few years ago, as a result of a series of over-the-counter approvals where a homeowners association was not consulted, staff was going to add a checkbox on its application form asking if there was a homeowners association, and if there was one, the applicants would be asked if they have the approval of the association.

Ms. Amos stated that she believed this was the Lemoine Ranch applications where there were over-the-counter approvals and conflicts with the homeowners association. She indicated that the application form submitted at the counter includes information on the property owner, whose signature is required. She added that there is also a box where the applicant has to check if there is an owner or business association and whether or not it has any reviewing authority or approval which need to accompany the

application. She noted that it is the responsibility of the applicant to provide that information, although for the most part, staff knows which areas have owners and business associations and pursues the matter if the applicant does not check the box.

Commissioner Blank asked staff whether or not this occurred in this application.

Ms. Amos stated that the application was filled out completely; the applicant checked the box and provided the appropriate correspondence in terms of emails that show that she did have conversations with the association but indicated that she wanted to pursue her application anyway.

Commissioner Blank commented that the box then does not do anything for the City.

Ms. Harryman explained that it would be for the applicants to inform staff that they notified or had discussion with their association.

Commissioner Pearce inquired, if staff believed this was a tutoring facility and the CUP runs with the land, and the application occupies the same footprint as the approved tutoring facility, if it would have to come before the Commission.

Ms. Stern replied that use would have to be identical in terms of operational characteristics.

Commissioner Pearce inquired if they had to be identical and not just substantially the same in terms of age, range, ratio, and hours of operation.

Ms. Stern said yes.

Commissioner Pearce commented that the terms are pretty narrow.

Commissioner Blank commented that he was under the impression that the reason the checkbox was included on the form was to prevent applicants from bypassing their homeowners association. He stated that it seems to him that when one moves into an owners association, he or she agrees to its rules and regulations, and any changes to be made to the house would first go through the architectural review board. He noted that one homeowner in his area received a City permit to put a roof on his house, but he did not have an association approval, and he had to take the whole roof off and put the right roof back on. He added that it did not make anyone happy, but if the association does not do that, then there is no reason to have an association.

Commissioner Blank continued that he recognizes the issue with this application and applauds what the applicant is trying to do, but it appears like the Commission is bypassing the process. He noted that when he asked the applicant what he intended to do if he got City approval, he was hoping that the applicant would say that he would go back to the association and see if they can work something out.

Commissioner Olson commented that he thought he heard the applicant say that.

Commissioner Blank stated that the applicant said he would open his business.

Commissioner Olson noted that the applicant also said that.

Commissioner Blank indicated that he did not hear the applicant say that.

Commissioner Blank continued that his second concern, although it was not brought up as an issue, involved the wireless ordinance. He noted that sometimes, a wireless facility cannot be put on another building, or the wireless company says it does not want to put it there. He noted that by approving this application, the Commission might potentially impact an area in terms of the installation of a wireless facility that might not otherwise be impacted.

Chair Narum asked staff for clarification about the wireless facility.

Ms. Harryman stated that before she clarifies that issue, she would like to address the matter of private documents such as CC&Rs. She indicated that from the City's perspective, when an application is filed, by virtue of the Permit Streamlining Act, the City needs to process the application regardless of what the private documents might say. She explained that the reason the City's Code says that staff needs to apply the City's own zoning codes and not look at other private documents is because, as what happened this evening when one speaker stated that staff did not have the right CC&Rs but staff thinks it does, there may be updated CC&Rs, or staff may not have all the documents. She added that private documents are open to interpretation much of the time, or they may not be based on law, and now the Planning Commission is being asked to be judge and jury on, for example, whether or not an easement exists. She emphasized that this is an area the City does not to get into, and when the City starts denying applications and making considerations based on those private documents, and the City gets it wrong, the City gets into a potential lawsuit.

Ms. Harryman stated that she recalls the box on the application form. She noted that the intent at that time may have been that the City wants and encourages the applicant to say "yes," but what it really does is have staff ask the applicant for that extra noticing, to make the effort to talk to the neighbors even if it's not the owners or business association, always to try and get that cooperation ahead of time.

Commissioner Blank inquired whether there are cities that require homeowner association approval before it talks to the applicant. He stated that it seems like the owners association would have a difficult time and it would create a lot of problems if the City does not consider that.

Ms. Harryman replied that there may be some cities that do that but that she will not say whether that is lawful or not until it gets challenged. She added that she is not aware of any court cases on this in particular. She indicated that her observation is really the

intent of the ordinance, and the City's Code, as written, is good one. She noted that the City would like to see agreement, but if there is none, the City needs to apply its zoning ordinance, and private parties will have to settle their differences and work things out however they choose.

Chair Narum requested clarification regarding if approving this application would preclude installing a wireless facility.

Ms. Harryman stated that she cannot comment on Jack Balch's particular email regarding this matter. She explained that the wireless ordinance actually uses 300-foot radius maps, and the Code actually works in the reverse: one would need to know where the wireless facility is locating and ensuring it is 300 feet away from the property line of a child care center. She stated that she was not certain, but it appears based on the maps that Jack Balch may already have a conflict, and under the City's current ordinance, he cannot have a wireless facility there.

Ms. Harryman pointed out that the ordinance includes language that the Council should update the ordinance every five years; the ordinance was adopted in 1998 and it has not been reviewed since. She noted that this area is constantly evolving, technology is evolving, case law changes regularly, and other areas surrounding wireless is constantly changing. She indicated that staff has begun to work with Planning staff to look at the wireless ordinance and will be making some recommendations, including ones which may affect this 300-foot radius provision.

Commissioner O'Connor commented that as the ordinance exists today, when the Commission approves a school or child care facility, whether as a conditional approval or straight zoning, it could have some effect on whether someone could put a wireless facility.

Ms. Harryman said yes. She added that conversely, if an applicant is trying to put a wireless facility on a building, a childcare facility, public or private school, or park cannot be located within a minimum of 300 feet from the property line.

Commissioner Blank commented that many years ago an applicant was trying to open a child care center and claimed to be licensed by the State but could never produce the license. In this regard, he suggested that, with respect to Condition No. 6, the City be in receipt of the approval as opposed to having a letter from the applicant indicating approval.

Ms. Harryman stated that this topic was discussed with the Planning Commission and the City Council with respect to what to do with these types of uses and how far the City could go about putting its own requirements. She noted that the City is starting to get into the area of what the State regulates as well as pre-emption issues, and staff felt comfortable in asking for the self-certification.

Chair Narum recalled having this discussion a few times and added that part of the reasoning involved the fact that the Police Department was not willing or not able to conduct the background checks.

Commissioner Blank stated that he is not saying that the Police Department should do criminal background checks but suggested that somebody other than the applicant certify that the criminal background check has been done, in the same way that someone other than the applicant should certify that CPR was completed. He indicated that it does not feel right and feels there is a tremendous amount of inconsistency.

Ms. Stern stated that staff looked at the background check, and there is a lot of detail about what crimes should be considered or excluded from the background check, such as shoplifting for teenagers.

Commissioner Blank noted that the facility could hire someone who is a convicted felon or a child molester, and by this language, this would be all right because all the applicant has to do is say that it was done.

Ms. Harryman asked Commissioner Blank if the issue is “conducted and completed” versus “conducted and satisfied, or passed or approved.”

Commissioner Blank said yes and recommended the addition of corresponding verbiage to be determined by Counsel to Condition No. 6. He also requested modifying Condition No. 7 to read “...undergo first-aid and CPR training and obtain certification prior to issuance of a business license...”

Commissioner Pearce requested that the standard conditions be revised permanently.

Commissioner O'Connor stated that he does not like CC&Rs that dictate what uses are allowed and prefers that the City have the right and know that when it approves an application, it can put whatever conditions of approval are necessary to meet whatever conditions the Commission is looking for. He added that he recognized things change and that it is difficult to start changing these private documents. He indicated that as conditions warrant, he would rather have one level, which is the City's zoning ordinance. He stated that he understands the City Attorney's statement that the Commission cannot get involved in trying to interpret every set of CC&Rs that come before the Commission. He reiterated that the Commission needs to look at this from a zoning perspective and where the Commission thinks it should go, and it would be up to the private parties to work things out among themselves and how to accomplish that.

Commissioner Olson agreed with Commissioner O'Connor's comments. He stated that he thinks it is a fine use and that to say at this point that it cannot be located there from the standpoint of the association is inconsistent, as there are other businesses in the Park that involve children.

Commissioner Blank moved to make the required conditional use findings as listed in the staff report and to approve Case PCUP-296, subject to the conditions listed in Exhibit A of the staff report, with the addition of verbiage, as determined by Counsel, to Condition No. 6 and Condition No. 7 requiring adult employees to pass criminal background check and to obtain first-aid and CPR certification, respectively.

Commissioner Olson seconded the motion.

Commissioner Blank encouraged the applicant, rather than taking the approach of just opening the business, to go back to the association to determine what can be worked out. He stated that just as the City does not get involved in private affairs, he does not want the applicant to use the City's approval as a leverage with the association. He indicated that what changed his mind in supporting the matter was Counsel's explanation of the distinction regarding not being involved in private affairs as well as the issue regarding the wireless facility, which was important to him although it was not brought up by any of the speakers.

Commissioner Pearce supported the motion and stated that it would be good to talk about the CC&Rs and the PUD as to whether the use is appropriate; but she cannot get involved in private contractual agreements and must look to the City's zoning ordinance. She noted that the property owner supports the request and has indicated that there are similar uses in the Park, and she believes the adjacent uses are compatible. She added that the Commission attempts to mitigate the safety impacts in the conditions of approval, and she would appreciate knowing if and when any conditions are being violated. With respect to the wireless facility, she stated that she does not recall an instance where the Commission has not permitted an application because of a potential future use, and therefore, she could not deny the application based on this future use.

Chair Narum indicated her support based on Commissioner Pearce's comments. She stated that the Commission has approved a number of these CUPs in this Business Park and has included specific conditions dealing with child safety. She noted that part of the reason for this is to make children safe, and if they are not safe, the Commission should hear about it and review the CUPs. She suggested that the Board contact staff about violations, and if staff cannot resolve the issue, it would come back to the Commission for reconsideration of the use. She indicated that she finds that Mr. Hodnefield's comments were appropriate that the economy is evolving and uses are changing whether we like it or not. She added that the Commission does the best it can in conditioning these applications, whether they be a distributor or manufacturer or a summer school program.

ROLL CALL VOTE:

AYES: Commissioners Blank, Narum, O'Connor, Olson, and Pearce

NOES: None

ABSTAIN: None

RECUSED: Commissioner Pentin

ABSENT: None

Resolution No. PC-2011-18 approving PCUP-296 was entered and approved as motioned.

7. MATTERS INITIATED BY COMMISSION MEMBERS

Commissioner Blank indicated that he would like to participate at the appropriate time in staff discussions regarding the wireless ordinance.

8. MATTERS FOR COMMISSION'S REVIEW/ACTION

a. Future Planning Calendar

No discussion was held or action taken.

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.

9. COMMUNICATIONS

No discussion was held or action taken.

10. REFERRALS

No discussion was held or action taken.

11. MATTERS FOR COMMISSION'S INFORMATION

No discussion was held or action taken.

12. ADJOURNMENT

Chair Narum adjourned the Planning Commission meeting at 8:40 p.m.

Respectfully,

JANICE STERN
Secretary

