



## PLANNING COMMISSION MINUTES

---

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

**DRAFT**

**Wednesday, August 25, 2010**

### **CALL TO ORDER**

The Planning Commission Regular Meeting of August 25, 2010, was called to order at 7:00 p.m. by Chair Olson.

#### **1. ROLL CALL**

Staff Members Present: Brian Dolan, Director of Community Development; Julie Harryman, Assistant City Attorney; Janice Stern, Planning Manager; Mike Tassano, Traffic Engineer; Joshua Pack, Senior Transportation Engineer; Wes Jost, Development Services Manager; Steve Otto, Senior Planner; Marion Pavan, Associate Planner; Shweta Bonn, Assistant Planner; and Maria L. Hoey, Recording Secretary

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

Commissioners Absent: None

#### **2. APPROVAL OF MINUTES**

##### **a. July 14, 2010**

Commissioner Pentin note a typographical error and requested that the last sentence of the first paragraph of page 4 be modified as follows: "She He inquired if the first application required first-aid- and CPR-trained staff."

**Commissioner Narum moved to approve the Minutes of July 14, 2010, as amended.**

**Commissioner O'Connor 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 July 14, 2010 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 speakers.

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

There were no revisions or omissions to the Agenda.

**5. CONSENT CALENDAR**

Janice Stern called the Commission's attention to a memo from staff regarding an additional condition of approval for PCUP-273, Diamond Pleasanton Enterprise.

**a. PCUP-273, Diamond Pleasanton Enterprise**

Application to modify the approved Conditional Use Permit (UP-90-43) for the operation of Status (formerly Aura Nightclub) at 4825 Hopyard Road to allow an outdoor seating/standing area and to increase the maximum occupancy at the facility. Zoning for the property is PUD-I/C-O (Planned Unit Development – Industrial, Commercial, and Office) District.

**b. PCUP-272, Preet Raey/Fancher Development Services for California Pizza Kitchen**

Application for a Conditional Use Permit to operate a restaurant with alcoholic beverage service after 10:00 p.m. at 1328 Stoneridge Mall Road in the Stoneridge Mall Regional Shopping Center. Zoning for the property is C-R (Regional Commercial) – M (Mall) District.

**c. PCUP-277, Anytime Fitness, Jordan Boreman**

Application for a Conditional Use Permit to operate a fitness facility at 3500 Bernal Avenue, Suite 110, in the Vintage Hills Shopping Center. Zoning for the property is PUD-C-N (Planned Unit Development – Neighborhood Commercial).

**d. PCUP-278, TNT Fire Protection Inc., Thomas Peterson**

Application for a Conditional Use Permit to operate a fire sprinkler contractor business at 1039 Serpentine Lane, Suite C, in the Valley Business Park. Zoning for the property is PUD-I (Planned Unit Development – Industrial) District.

Commissioner Narum moved to make the conditional use findings as described in the staff reports and to approve PCUP-273, Diamond Pleasanton Enterprise; PCUP-272, Preet Raey/Fancher Development Services for California Pizza Kitchen; PCUP-277, Anytime Fitness, Jordan Boreman; and PCUP-278, TNT Fire Protection Inc., Thomas Peterson, subject to the conditions of approval as listed in Exhibit A of the staff reports and the additional condition in the staff memo, dated August 25, 2010, for PCUP-273, Diamond Pleasanton Enterprise. Commissioner Blank seconded the motion.

**ROLL CALL VOTE:**

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

**NOES:** None.

**ABSTAIN:** None.

**RECUSED:** None.

**ABSENT:** None.

Resolutions Nos. PC-2010-18 approving PCUP-273, Diamond Pleasanton Enterprise; PCUP-2010-19 approving PCUP-272, Preet Raey/Fancher Development Services for California Pizza Kitchen; PC-2010-20 approving PCUP-277, Anytime Fitness, Jordan Boreman; and PC-2010-21 approving PCUP-278, TNT Fire Protection Inc., Thomas Peterson, were entered and adopted as motioned.

**6. PUBLIC HEARINGS AND OTHER MATTERS**

**a. PAP-146, David & Stephanie Persin, Hans & Roxana Hoehne, and Joe & TinaMarie Perry, Appellants (PADR-2090, Rodney & Trina Lopez, Applicants)**

Appeal of the Zoning Administrator's approval for Administrative Design Review to construct an approximately 80-square-foot single-story addition and an approximately 1,038-square-foot second-story addition to the existing residence located at 6114 Homer Court. Zoning for the property is R-1-6,500 (Single-Family Residential) District.

Shweta Bonn presented the staff report and described the scope, layout, and key elements of the project and the appeal.

Commissioner Blank first complimented staff on a well-written staff report and presentation. He then noted that staff mentioned that there are no restrictions on two stories and inquired if there were any viewscape easements on the area.

Ms. Bonn replied that there were none.

Commissioner Blank further noted that staff had indicated that the windows had been reduced and inquired what the size of the bedroom windows in the bedroom would be.

Ms. Bonn replied that Condition No. 5 estimates that the windows would be approximately 12 to 14 inches tall by approximately 24 to 36 inches wide. She added, however, that the size would not be formalized until the drawings are submitted for building permits

Commissioner Blank stated that the modified size was for the two second-story bathroom windows; however, Condition No. 6 refers to the second-story bedroom window as being reduced in size to the maximum extent feasible. He indicated that this does not specify a size and felt that this was somewhat open-ended. He inquired if the bedroom window would be the same size as the bathroom windows.

Ms. Bonn replied that it would not be the same size. She explained that the Building Division has specific requirements for bedroom windows to meet egress purposes.

Commissioner Blank inquired if bedroom windows are required to be six square feet in size and three feet off the floor.

Ms. Stern indicated that the emergency egress window requirements are that the window be 5.7 square feet with a minimum of 20 inches net clear width when the window is opened. She also noted the window must be a maximum of 44 inches from the floor.

Commissioner Blank referred to the vicinity map slide identifying the two-story houses in the area and showing the subject house at the end of Homer Court. He inquired if staff looked farther north to determine if there were any other two-story homes.

Ms. Bonn said no.

Commissioner Blank stated that reference is made to 2,607 square feet in various correspondence and numbers. He inquired if staff arrived at this number by adding up the first and second floors in the architect's plans.

Ms. Bonn said yes.

Commissioner Blank requested confirmation that the proposed home would be the second largest home in the area, with the largest being on Robin Court.

Ms. Bonn confirmed that was correct.

Commissioner O'Connor noted, however, that the proposed home would not have the largest floor area ratio (FAR), based on the chart of residential property and home sizes on page 13 of the staff report.

Commissioner Blank stated that he was looking at other 2,000-square-foot homes in the area and noted the 2,900-square-foot and 2,300-square-foot homes.

#### **THE PUBLIC HEARING WAS OPENED.**

David Persin, appellant, read from a prepared statement, copies of which he distributed to the Commissioners and staff. He stated that he and his wife, Stephanie, were one of the three appellants in the matter. He indicated that many issues and accusations have been raised between the applicants and the appellants that have created a very contentious environment. He noted that he would not address the applicants' allegations which, with no merit, include racially motivated actions. He added that he would also not address the rationale behind the applicant's desire to increase their home size as that is their personal business; however, he believed that the applicants can find other less impacting and less costly solutions to their challenges.

Mr. Persin continued that their home is located to the rear of the subject property and that they have lived there for 15 years. He indicated that they have spent considerable time, effort, and money upgrading the interior and exterior of their house without ever impacting their neighbors. He stated that their backyard is a place of entertaining with a pool, barbecue island, and a trampoline where most of the neighbors and their children regularly enjoy spending time. He added that their master bedroom is located on the side of their home closest to the subject property.

Mr. Persin then presented some pictures demonstrating how the applicants' second story addition would clearly impact their indoor and backyard views, their sunlight, their privacy, and their family's overall quality of enjoying the life they have built and experience in their home. He noted that they have planned for many years to enjoy their retirement in the home where they have raised their seven children and shared so many wonderful memories. He stated that he had attached to his statement, some letters from local realtors who, like themselves, believe that their property value would decrease considerably due to the close proximity of a second-story addition. He noted that they do not have the option of going back in time to undo their planning, expectations, or capital outlay; while the applicant can still make other plans for their family's future and find a less detrimental solution for all neighbors concerned.

Mr. Persin stated that the appellants have provided the City with a list of the 12 two-story homes of the 939 total residences in the Val Vista development, attached to their letter as Exhibit C. He noted that the list shows that the applicants' proposed project would result in the largest two-story home in the entire development. He indicated that they are not arguing that the applicants should not be allowed to build the

largest two-story home in the neighborhood simply because it would be the largest in the neighborhood, but rather, because, based upon the applicants' lot size of only 6,521 square feet and the unusual configuration of their home in relation to their neighbors' homes, the proposed addition is too large and impacts the surrounding neighbors.

Mr. Persin then referred to page 13 of the staff report which states that with the proposed addition, the house would be 2,607 square feet and would reach the maximum 40 percent FAR permitted. He noted that while it is quite obvious what it means to maximize the permitted FAR from a mathematical perspective, it would be all the more impacting from the perspective of the surrounding neighbors when a 2,607-square-foot house, which was configured in an unusual way when it was originally built, is crammed to capacity on a relatively smaller-sized lot. He added that when the applicants are unable or unwilling to increase their home size through a first-story addition, the only course is to build up, which creates more of an impact to the surrounding neighbors.

Mr. Persin then referred to a section on page 12 of the staff report: "The appellants' letters state square footages of the other two-story homes in the Val Vista neighborhood and indicate the proposed addition would make it the largest two-story home in the Val Vista neighborhood. Staff has evaluated the sizes of homes in immediate vicinity of the subject property. There is no standard radius in the code that defines the 'vicinity' or 'neighborhood.' In order to incorporate a reasonable number of properties, staff has used a 300-foot radius." Mr. Persin noted that staff then analyzes 40 properties in a 300-foot radius of the subject property and concludes that the square footage of the subject property would be within the range of the other homes in the vicinity of the property. He stated that staff's analysis and conclusions are entirely irrelevant because the issue under appeal is not whether the subject home at a proposed 2,607 square feet would fit within the square footages of all of its neighboring properties, but rather, whether or not there is too much additional home being built on too small a lot and in too impacting a fashion, especially in light of the non-conforming, to today's standards, way in which the home was originally built and positioned on the lot.

Mr. Persin noted that the planner acknowledges on page 9 of the staff report that the existing configuration of the subject property is non-conforming to current zoning standards, with the rear portion of the home constructed with only a seven-foot, seven-inch rear yard setback at its closest point. He stated that although the subject property was conforming to then zoning standards when originally built in approximately 1968, its proximity to both rear neighbors' yards clearly exacerbates the impact of the proposed addition on his wife and himself and his surrounding neighbors. He added that, in fact, looking in more detail at staff's use of the surrounding property numbers, there are no two-story homes listed, and the maximum FAR of the two largest homes are 32 percent and 23 percent, respectively. He noted that even with more than the typical square footage, the two largest homes within the 300-foot radius are still single story, considerably less than the maximum allowable FAR, and not of any impact to

their surrounding neighbors, in stark contrast to the applicants' proposed second story addition.

Mr. Persin acknowledged that over many years, approximately one percent of the homes in the Val Vista development have been increased in size from one to two stories. He indicated that he had verified with staff that in none of these other 12 instances were there any objections or appeals from surrounding neighbors filed with or communicated to the City Planning Commission. He noted that it was okay with those neighbors in their specific situations to allow the second-story additions to be built, but it is not okay with them in this specific situation to allow this second story, as proposed, to be built.

Mr. Persin further noted that on page 12 of the staff report, it states: "Staff believes that in this case there are no design options, short of removing the second-story addition, which would satisfactorily address the neighbors' concern. Given that the addition meets all of the Code requirements, including height, and is typical of second-story additions approved in other areas of the City, staff does not believe it is appropriate to deny the application just because it is a second-story addition." He indicated that having no Code restrictions prohibiting two-story additions in the Val Vista development does not mean that the Planning Commission should simply rubber-stamp the applicants' proposed addition. He added that it is their understanding that the Planning commission is composed of Pleasanton residents just like themselves and that it is their hope that as Pleasanton residents, the Commission will place itself in their shoes when it comes to examining the unique and problematic circumstances of allowing a second-story addition to be built in this unusual property configuration.

Mr. Persin then referred to a section of page 8 of the staff report: "The existing juxtaposition of the home on the subject property and the homes on the surrounding properties make for a challenging situation to mitigate all concerns from all parties involved." He stated that in dealing with the City planners, they have been continuously been told of staff's desire to try and find a compromise between the applicants and the appellants; however, at this point, they believe the City has been remiss in finding a real compromise between the parties involved. He noted that to get their project pushed through, the applicants have made modifications relating only to window size and type and the planting of foliage. He added that although these are concessions, they are basically minor ones and made mainly as a way to placate the planner's continued approval of their project.

Mr. Persin stated that the appellants feel the applicants can make stronger, more viable efforts to expand their home in a less impacting manner which would be more representative of a real compromise. He agreed that while this situation may be challenging, as the planner stated, this should not translate to a default position that the applicants' proposal should be granted because no solution can be identified which makes everyone happy.

Mr. Persin stated that if the Planning Commission decides it must approve the subject property addition, the appellants are asking the Commission to have the applicants reassess their ability to utilize their substantial ground level unused side yard lot space as well as or in addition to restructuring the second-story addition so it is smaller in size and primarily located in the western front quadrant of their home, where it would be of less impact to all three objecting neighbors. He added that a second-story addition in the western front quadrant of the subject property would be closest to the applicants' western next-door neighbor who has indicated that she has no issues with a second-story addition being built.

Mr. Persin concluded by thanking the Planning Commission and directing its attention to the newly submitted letters opposing the second-story addition from seven neighbors who received a postcard notice of the proposal.

Mr. Persin then read a letter from a next-door neighbor who is not a party to the appeal but in support of the appellants.

*"This letter is written in support of the Appellants in the matter PAP-146.*

*"My name is Myra Miliambiling, and my uncle George Toumazos and I reside at 6204 Robin Court, next door to Stephanie and David Persin (one of the three Appellant couples). We have resided at this location for three years now.*

*"In my time living at this location, I have found Stephanie and David to be the most easy-going neighbors I have ever encountered. They are always hosting all of our neighbors and the children of our neighbors in their home, at the pool in their backyard, and on their side yard trampoline. They are quick to lend a hand no matter what the request and they are always accommodating to all those who interact with them.*

*"For Stephanie and David to take the unusual step of appealing their backyard neighbor's planned addition, I believe there must really be some issue there. When I see how close the back side of the Applicant's home is to Stephanie and David's rear fence, I can understand their concerns.*

*"I too would feel like my privacy, quality of life, and home value would be compromised if I was in their situation and the second story addition was allowed to move forward.*

*"In fact, as a neighbor living only a couple of homes away from the proposed addition, I am also firmly against it. One of the most defining characteristics of this neighborhood is its original spaciousness and its lack of two story homes.*

*"In this particular circumstance, I ask the Planning Commission to deny this proposed project.*



*"Thank you for taking the time to read my letter."*

Chair Olson stated that he had first encountered Mr. Persin's proposed solution that the applicants utilize the unused side-yard lot space and limit the second-story addition to the front western quadrant of the home in the three appellants' letter of July 15, 2010, which is part of the appeal packet. He asked Mr. Persin whether all three appellants still hold the view that there is a solution within the confines of the applicants' property.

Mr. Persin stated that this was a difficult question to answer as each of the appellants have their own individual concerns, and he does not know if he would be capable of answering the question without individually asking each of the other two appellants.

Commissioner Pentin asked Mr. Persin if he would be amenable if the applicants utilized most of the first floor and still built on the second floor.

Mr. Persin said yes. He acknowledged that compromise is difficult but that while they do not want a second floor addition, they would like to see the applicant give more.

Commissioner Blank asked Mr. Persin to verify that he had stated that this proposal would make the house the largest in the Val Vista development.

Mr. Persin replied that he stated it would be the largest two-story home out of the 12 two-story homes in the Val Vista development. He added that he had taken his information from the public records.

Commissioner Blank inquired if the 2,900-square-foot home on Robin Court is single story.

Ms. Bonn said yes.

Commissioner Blank asked Ms. Bonn if she would agree the proposed project would make it the largest two-story home in the development.

Ms. Bonn replied that she was not certain it would be the largest and noted that the homes listed on page 13 of the staff report were all single stories and were located within the 300-foot radius of the subject property.

Mr. Persin stated that the houses listed in his letter, which is in the packet, are all two stories.

Commissioner Pearce requested clarification from Mr. Persin that when he refers to limiting the second-story addition to the western front quadrant, he was talking not about taking and shifting the entire addition west but cutting the addition in half and using only the one-quarter of the house.

Mr. Persin said yes.

Commissioner O'Connor asked Mr. Persin if the 2,911-square-foot house is his.

Mr. Persin said yes.

Commissioner O'Connor stated that one of the concerns expressed by Mr. Persin and a neighbor at 6217 Robin Court in their letters included in the packet was that the addition would have an impact on sunlight; however, Commissioner O'Connor noted that Mr. Persin's house is south of the new addition and that any shading would go to the north side and not to the south side.

Mr. Persin stated that their point is that in looking at the aerial views, they do not know to what extent the blocking of sunlight would be; however, the second story would be very close because the setback between their fence and the back of their homes is only seven feet.

Commissioner O'Connor noted that the entire second-story addition would be within the required setback.

Mr. Persin agreed but added that the entire house will be shifted back dramatically and will be closer than any typical addition of this type because of the lot configuration.

Commissioner O'Connor reiterated that it would still meet all the setbacks requirements. He added that the concern might be that the addition could shade the swimming pool area in Mr. Persin's backyard but that it was difficult to make that determination.

Stephanie Persin, appellant, stated that because the applicants' property is pie-shaped, there would be quite a bit of shading on the side of their home because of the closeness of the house. She added that this is also the reason why it is impacting so many neighbors.

Carol Hoehne Graham stated that she is the daughter of Hans and Roxana Hoehne, appellants, and that she is representing the Hoehne family, particularly her father, who is a 40-plus-year resident and taxpayer of Pleasanton. She indicated that she has extensively reviewed the General Plan, City codes, staff report, and properties involved and that it is very clear that the application and appeal have unique aspects. She added that she hoped the planners give weight to this as a unique situation and do not make a cookie cutter decision, and that the democratic principle of serving the greater good is upheld.

Ms. Graham stated that the first thing that should be emphasized is the uniqueness and the way the Lopez property is situated. She then handed the Commissioners pictures of an aerial view from a satellite that shows how close the Lopez property is to both the Hoehne and the Persin backyards. She noted that while there are 12 other two--story additions in the Val Vista development, not one is situated as close to another backyard as the Lopezes' proposed addition is. She indicated that the Lopezes' proposed

second-story addition would create a looming presence in her parents' backyard that no other home in Val Vista has been forced to accept.

Ms. Graham then referred to a second picture showing a ground-level view of her parents' kitchen table. She stated that both her parents are retired and that her father likes to watch the Giants game with a view of the blue sky behind. She noted that should the Lopezes add a second story, her father would be looking directly onto concrete.

Ms. Graham stated that her parents have hosted countless barbeques, birthday parties, christenings, anniversaries, and outdoor get together's in their backyard. She indicated that the Lopezes' second-story addition would convert their backyard into a courtyard instead of the open, airy space it now is. She noted that the Italian Cypress suggested to stripe the concrete uprising would cause it to look like a 1960's apartment building. She asked the Commissioners if they would prefer a view of tall columns of shrub or open blue sky from their own backyards and why they would wish any less for her parents.

Ms. Graham then referred to page 13 of the staff report regarding General Plan consistency to "Preserve and enhance the character of the existing residential neighborhoods." She noted that while 12 of the houses do have second stories, it is 12 of 900 homes in the development, which is not 25 percent, 15 percent, or 10 percent, but less than 1.5 percent of the homes. She added that if one stands in the middle of Robin Court and slowly turns 360 degrees, one would see the ridge, blue skies, and trees; not two-story houses.

Ms. Graham concluded by stating that in the staff report, the Zoning Administrator, Steve Otto, indicated that he likes to work out a win-win situation but it does not always work out that way. She asked if, in a case when both parties have legal and civil rights, democracy then takes into account what is for the greater good. She noted that three families will be impeded negatively by one family's need for more space. She added that while the Lopezes did not know when they purchased their home that they may someday need office space or that their children may grow in number or that their parents may age, it is entirely unfair and irresponsible of them to impose on the neighbors for those reasons. She asked the Commission to deny the Lopezes' application to impose on their neighbors.

Commissioner Pentin suggested that Chair Olson ask Ms. Graham the same question he asked of the Persins.

Chair Olson noted that the three appellants, in their July 15, 2010 letter, proposed a possible solution to this issue of building on the front western quadrant of the home where its impact to all three objecting neighbors would be minimized. He asked Ms. Graham if her parents are still amenable to this solution.

Ms. Graham inquired if the second story would move forward or if square footage would be added onto the first floor.

Chair Olson replied that it would be a combination of both.

Ms. Graham replied that the preference is to move the addition forward. She reiterated that as shown in the photos, her parents will lose all privacy inside their home as well as in their backyard. She added that, cypress trees would not change this situation and that what the applicants should do is move to a larger house.

Chair Olson referred to the letter that the Hoehnes signed.

Ms. Graham referred the question to her mother.

Roxana Hoehne, appellant, stated that she would prefer not having any buildings on the second story; however, as a compromise, she would agree to having a major portion of the second story on the front western quadrant.

Chair Olson then asked the same question to the next speakers, appellants Joe and TinaMarie Perry.

TinaMarie Perry, appellant, replied that they are amenable.

Ms. Perry stated that she and her husband, Joe, live on the east side of the Lopezes' property. She indicated that they were unable to attend the Zoning Administrator hearing and would like to review their opposition to the proposed additions at 6114 Homer Court or discuss a potential modification. She referred to page 8 of the staff report and indicated that as shown in the left bottom photo, their view of their home looking out is already greatly blocked and that adding a second story structure would greatly impact any view they have left. She added that it will block their side views, and natural sunlight as their home is considerably tucked back behind the Lopezes' home by 19 feet.

Ms. Perry stated that building a home of this magnitude in their quaint, single-story neighborhood will take away the very reason they had bought their home five years ago. She noted that they have lived in this part of town for the last 13 years and that the addition will damage their resale value. She added that while the Lopezes need more space, they do not need to build such a large addition that clearly impacts the majority of the surrounding homes. She indicated that there are alternative options such as building on the garage side where the next-door neighbor has voiced support of the addition.

Ms. Perry concluded that they are a community and that the decision should not be based on one family's needs.

Rodney Lopez, applicant, stated that he believed staff had not received an email he had sent negating some of the misleading statements made in opposition to their request, as that email was not attached to the staff report.

Ms. Bonn confirmed that she had not received the email.

Mr. Lopez stated that their proposed addition has been considered in view of their family's personal and professional needs as well as neighbor's needs. He indicated that the Zoning Administrator approved their proposal on June 30, 2010 with a few modifications. He noted that one of the key points made by the Zoning Administrator is that zoning does allow two stories to be built under certain parameters, such as setback, height, limits, and FARs, all of which they meet or exceed. He added that the Zoning Administrator also specifically stated that their home addition has been designed to minimize impact to neighbors. He stated that they completely agree with the assessments and noted that the designs before the Commission, along with the design modification, are absolutely different from their initial design because it takes additional consideration of their neighbors' concerns to lessen perceived impacts.

Mr. Lopez stated that when they bought their house 12 years ago, they knew that adding a second story to their home was an option, and they had counted on it. He noted that their real estate agent and title company were required to disclose this information to them by having them sign the CC&R's, which stated that their home or any home in the neighborhood could be modified to a two-story home. He added that the declaration of restrictions were specifically written for Tract 2953, residents of Homer Court and Robin Court, and have been in effect since the homes were built in 1969. He stated that these neighborhoods were initially intended to support one- and two-story homes and that everyone who purchased a home on Homer Court or Robin Court over the last 40+ years was informed and required to sign the same declaration or restrictions, stating that two-story homes were permitted. He added that the CC&R's were also backed up by the current zoning regulations in place today.

Mr. Lopez stated that disallowing second-story additions in this area is wrong and goes against the initial intent of the neighborhood as well as current zoning regulations. He added that a precedent has already been set by 15 other Val Vista two-story homes including three homes that were missed in the staff report located on Bacon Court, north of the subject property.

Mr. Lopez stated that his property has been mistakenly granted as being unusual or unique in several of the documents submitted to the City by the appellants. He noted that his floor plan is different from any other house in the development, and the pie-shaped lot coupled with the color of the house might make this unique; however, the zoning regulations do not consider it unique as the proposed additions fall within current zoning regulations as set forth by the City and do not require any variances.

With respect to being the largest home in the neighborhood, Mr. Lopez stated that it would not be the largest or the largest two-story home in the development. He noted

that as presented in the staff report, their proposed home size at 2,607 square feet would be in the range of the homes within the vicinity of a 300-foot radius. He further noted that the Persins would still have largest home in the neighborhood and indicated that he wants to be given the same courtesy granted to the Persins when they increased their home size.

Mr. Lopez then addressed the proximity issue, stating that there are many other existing homes with these same circumstances in cul-de-sacs within the development. He indicated that they are proposing a second-floor addition on a portion of their pre-existing first-floor footprint and that the second-floor addition is closer to the front of their home and farther away from the rear neighbors; at its closest location, the addition would be 20 feet away from their rear neighbor's property line.

Mr. Lopez clarified that they do not use their home for personal business but work from home and telecommute. He added that the proposal to move the addition to the west side of the property is a false sense of compromise that has come about because the staff report seems to be in support of the project. He indicated that he had asked several times if he could present their plans to the appellants, and they have always said no without looking at the plans. He stated that he felt the appellants do not understand that by reducing the scope of the home by one side, they will still be as close to the Hoehnes' residence to the rear and that there will probably be some additional windows to the east which will be facing the Perrys' home and which the Perrys have emphatically indicated they did not want. He noted that this would also not provide the additional square footage they need, given the current setbacks and regulations. He indicated that he did not find it is reasonable to ask them to build on their back yard as it would remove the area their three children use and play in. He also noted that at no time would the rear neighbors have the sun blocked in their backyards because they are located to the south, and their pool would never be affected since it is quite a distance away from the home area.

Mr. Lopez then congratulated the Planning Commission and Planning staff, stating that the past month's issue of Money Magazine indicated that a national survey ranked Pleasanton as one of the top 100 best places in the U.S. in which to live. He added that Pleasanton was the only Bay Area city to earn this national honor. He noted that this was made possible because Commission members abide by existing zoning regulations and CC&R's, which he has met or exceeded. He stated that all parties involved should feel comforted and realize that these national honors and potential buyers seeing existing residents investing in their homes and neighborhoods will not decrease property values but would, in fact, increase because of projects like this

Mr. Lopez then addressed a letter dated August 16<sup>th</sup> and signed by Mr. and Mrs. Persin to clarify some misleading and incorrect information labeled as factual in a written narrative in support of the appeal. He stated that the letter had the incorrect square footage for the second-story, which was already corrected in the Zoning Administrator's hearing, but which numbers the Persins continue to use in order to mislead. He further mentioned that the Persins stated there are only 12 two-story homes, but there are 15

with two on Bacon Court that were not included. He noted that the Persins have also stated that the addition would make it the only home in the entire development to add a second story which is not limited in scope to only one side of the home. He indicated that a simple drive around the neighborhood would prove that this statement is not true and would not make his proposed addition unique. He re-emphasized that they are adding a second floor on their existing first-floor footprint and that the second-floor addition is closer to the front of their home.

Mr. Lopez reiterated that the development was designed to be one of single-story homes on reasonably-sized lots and that the original homes were single story; however, they also know that the development was designed to sustain single and two-story homes per the CC&R's, which were signed by all the homebuyers at the time they purchased their homes. He then asked the Commission to keep in mind that they have modified their original plan, reduced their scope, and moved it farther front to take into consideration the proximity of the new addition to the rear neighbors' property line.

In summary, Mr. Lopez indicated that the plans before the Commission is their second revision, modified based on the issues raised at the Zoning Administrator hearing and based upon what their contractor had run into in the past. He reiterated that they moved the addition farther away from the rear neighbors, maintained FAR and setback guidelines, improved the home cosmetics such as jutting out the roof line to make the addition more appealing to the eye, and recessing the front second-story addition to help with any impact of views to their side neighbors. He stated that they also agreed to modify the plans once more to address window relocation and sizing, as well as landscaping and other modifications as agreed upon in the Zoning Administrator hearing. He concluded that during the entire process, they have been accommodating to all parties involved and have agreed to the City's recommended revisions pertaining to the neighbors' concerns.

Trina Lopez addressed one of the appellants' statement that the Lopezes move to a larger house and indicated that moving is absolutely not an option.

Commissioner O'Connor referred to Mr. Lopez' statement that the appellants misstated the square footage of the house and inquired what the total square footage would be.

Mr. Lopez replied that the proposed square footage would increase the total square footage to 2,607, which is the number the Commission has.

Ms. Lopez noted that there is a 2,664-square-foot two-story home in Taffy Court.

Mr. Lopez referred to the 300-foot radius list on page 13 of the staff report and stated that this describes all the homes. He noted that their two-story home does not come close to the size of the Persins' home, who increased the size of their home several years ago. He added that the Persins' argument that the Lopez home would be the largest two-story home is incorrect.

Chair Olson asked Mr. Lopez if he felt there was room for further compromise.

Mr. Lopez replied that there is nothing to compromise with respect to what has been stated at this meeting. He stated that he did not believe the appellants were aware of the compromises they have made as their initial plans were actually drawn as a box on top of their existing home and actually drawn farther back toward the rear neighbors, which they moved forward at the request of the rear neighbors. He noted that moving the addition to one side and removing one portion of their proposal would not achieve the size they need. He added that they would then go beyond some of the requirements set by the development regulations, and he does not see a variance being granted, given what is going on between them and their rear neighbors.

Ms. Lopez added that trying to fit a single-story addition within the pie-shaped area would not be feasible. She indicated that they have three young elementary school children who play in the backyard, and it would not be reasonable or feasible to remove their entire backyard.

Mr. Lopez also noted that they attempted to work this out with their neighbors but was not well received. He added that they had no help from the rear neighbors until they received their letters at the Zoning Administrator's hearing.

Commissioner O'Connor asked Mr. Lopez how long they have lived at their residence.

Mr. Lopez replied that they had lived there for 12 years.

Commissioner Blank asked to see the declaration of restrictions from Ms. Lopez.

Ms. Lopez noted that at the bottom of one section under number 5 or 6 of the document, it states that homeowners can build up to a two-and-one-half-story home and a three-car garage.

#### **THE PUBLIC HEARING WAS CLOSED.**

Chair Olson asked staff if they believe there was room for further compromise in this case, stating he will never forget his first item which was a similar situation, and the City brought in a mediator and sat the parties down to hammer out an agreement. He indicated that not talking to each other is not an option.

Mr. Dolan replied that this is a possibility; however, there is a cost involved, and it must be determined who bears that cost. He added that they must also be willing participants.

Commissioner Pearce noted that in the past, retired Planning Commissioners acted as mediators. She then asked what the current side setback regulations were.



Ms. Bonn replied that the setback requirements were a minimum of five feet on one side with an aggregate of 12 feet between the two setbacks.

Commissioner Blank inquired whether or not this project meets this setback.

Ms. Stern replied that the existing rear first story does not meet the setback because it comes within seven feet as opposed to the required 20 feet.

Commissioner Pentin noted, however, that the proposed second story does meet the 20-foot setback and requested staff verification.

Ms. Stern replied that was correct.

Commissioner Blank stated that he found the language in the declaration of restrictions very interesting: "No lot shall be used except for residential purposes. No building shall be erected, altered, placed, or permitted to remain on any residential lot other than a one-story, single-family dwelling not to exceed 2.5 stories in height, and a private garage for not more than three cars." He noted that the language specifies a minimum with a "not-to-exceed" verbiage, obviously written by a lawyer, but it is not as permissive a language as what he would have originally thought.

Commissioner Pearce stated that she likes the idea of mediation. She noted that she sees no evidence of extensive discussions between the neighbors and would like to see more of this.

Chair Olson stated, however, that if he were the appellant, recognizing that City staff is recommending denial of the appeal, he would want to come to the table.

Commissioner O'Connor stated he recalls that when the Planning Commission sent one project to mediation, the Commission actually took a break during the meeting, and staff spoke with each party, who then agreed to go to mediation. He suggested a five-minute break for staff to talk to the parties.

Commissioner Blank disclosed that he has driven around the neighborhood several times but has not spoken with the appellants. He stated that he always tries to put his hat on as a neighbor living there. He added that he must also put on another hat and see that there are no view easements nor restrictions, but reasonability. He stated that he recalls one very large project in a very disruptive area where the Commission actually required the homeowner to put up story poles. He noted that there were no requirements to do the story poles, but they were erected and with them, the Commission was able to fashion some better compromises because it was able to see exactly what the impact would be and where the limits were. He stated that professionally prepared viewsapes could also be done; however, the story poles might be less expensive.

Commissioner Blank stated that he believes the setbacks do not comply with today's standards and inquired whether the homeowner must be mandated to comply with today's standards when building a second-story. He indicated that he could not tell what the project would look like without story poles or viewscapes. He noted that he actually walked the neighborhood and found the house to be pretty crowded in on the lot. He indicated that he wants to make sure the Commission does not make a mistake.

Commissioner Narum suggested a five-minute break. She stated that she drove both courts this morning and agreed with Commissioner Blank that it is hard to visualize what the second story would look like. She added, however, that if the additions are within all of the requirements, the tendency would be to approve it. She indicated that she recognizes that this is somewhat of a unique property, particularly with regard to the Perrys' house and the way they are angled on the lot.

Commissioner Blank stated that he likes the idea of mediation and added that perhaps doing something like story poles would help. He indicated that this would also allow the Commission to obtain some enhancements to the staff report, such as the addition of the two-story homes that were not included and the inclusion of all FAR's.

Commissioner Pentin stated that considering the tone of the Zoning Administrator's hearing and the comments made, he would like to know if staff believed mediation would work and change things or if the Commission simply pushing this off, only to return to the same place.

Mr. Dolan replied that a month ago, he did not believe the City would have an agreement on Staples Ranch either, so anything is possible. He stated that these questions are often more difficult for staff and the Commission than the larger projects. He added that mediation takes a lot of time and is not always successful; however, if it is worth the effort and that is what it takes, and if this is the direction the Commission wants to go, staff is completely willing to go down this path and pursue it. He indicated that it sounds like the Commission would prefer to have some fine-tooth compromise as opposed to a fundamental principle of second stories being allowed. He added that no matter what is built, some view will be blocked, and there will be windows looking in the backyards. He noted that this is more of a conceptual question: if it meets the criteria, then it will be approved.

Commissioner Blank stated that it is the uniqueness of this particular lot and the layout, and if these were identical lots in the middle of the street with no unique positional issues, it might be exactly as described.

Mr. Dolan stated that this is a fairly dense neighborhood without large yards or setbacks and not a lot of wiggle room. He noted that if a second story is added, sunlight will be blocked, windows will look into other people's backyards. He added that staff could cut the addition in half and still have 90 percent of the impact.

Commissioner Blank stated that if all of the windows were facing the street, there would be no complaints of looking into backyards; however, he was not sure this was reasonable or could be made part of a compromise.

Commissioner Pentin stated he was not sure this was legal.

Ms. Stern suggested the Commission consider putting some amount of time limit the parties must meet in mediation.

Commissioner Blank suggested taking a five-minute break for staff to talk separately to the appellants and applicant to determine whether or not they would be amenable to mediation.

Commissioner Pentin inquired whether the mediation would involve one applicant and three appellants or would the appellants appoint one person to meet with the applicant.

Commissioner Blank suggested that staff work this out.

Chair Olson called for a five-minute break, and thereafter reconvened the regular meeting.

Mr. Dolan announced that the applicants do not believe mediation would be successful and have declined to participate.

Commissioner Pearce referred to the rear setbacks and asked staff to confirm that the second story meets current setback standards, but the current first story does not.

Ms. Stern confirmed that was correct.

Commissioner Pearce noted that the proposal is not to push additional first-story space into old setbacks.

**Commissioner Blank moved to continue the item; to direct the applicant to install story poles or create digital viewscales with views from each of the appellants' properties; to direct staff to revise the staff report to include all two-story homes and their square footages and FAR's; and to have the item return to the Commission at the earliest possible meeting date.**

Ms. Stern requested clarification on what the story poles should show.

Commissioner Blank requested to show corners, edges, and tops, similar to what was done for a previous large project. He added that this would be at the applicant's expense.

**Commissioner Narum seconded the motion.**

Chair Olson suggested the public hearing be re-opened to ask the applicant whether he was willing to conduct a story pole analysis.

### **THE PUBLIC HEARING WAS RE-OPENED.**

Mr. Lopez stated that that they looked into such an analysis and the cost is something he is not willing to pay for, as he knows what the addition will look like based upon elevation plans. He added that if the appellants are willing to pay for the installation of story poles, he would give them access to his property to install them.

Commissioner Narum asked Mr. Lopez if he would agree to pay for a photo simulation of the addition.

Ms. Lopez replied that they would have to take that into consideration with their architect but that they were looking at receiving a decision tonight. She noted that the neighbors have told them that they plan to extend this for as long as possible. She added that they believe they have compromised on several areas and have accepted all the conditions, while the neighbors have done nothing but take.

Chair Olson advised the applicants and the appellants that regardless of whether the Commission decides to uphold or deny the appeal, the other party has the right to appeal the decision to the City Council.

Mr. Lopez indicated that he was aware of the 15-day appeal period.

### **THE PUBLIC HEARING WAS CLOSED.**

Commissioner Blank inquired if staff could provide an estimate of the cost to install story poles.

Mr. Dolan replied that it would depend on whether or not a contractor installs them, but he believed it would cost somewhere between \$600 and \$1,000.

Commissioner Blank stated that he assumed that if the motion on the table were to pass, the applicant could appeal the Commission's decision to the City Council.

Julie Harryman clarified that the motion was to continue the item and to instruct the applicant to construct story poles. She noted that the applicants had indicated that they do not want to do this and they could appeal this as well as the motion to continue.

Commissioner Blank stated that he was not sure of the exact cost, but an additional \$1,000 to \$2,000 is a small percentage of the construction cost for the project. He indicated that he wants to maintain the motion on the floor as he did not have enough information at this meeting to make an informed decision. He noted that the Commission has asked for story poles in the past, and the applicant is the party refusing mediation. He stated that from his perspective, it appears to him that the applicant has

already made a decision. He indicated that on one hand, the Commission may think after the story poles are installed that the additions are too overbearing; but alternately, the Commissioners could see that they over-reacted and find that the impact is less than it thought; or the Commission may also stay in the middle.

Commissioner Narum stated that more importantly, the appellants may learn that it might not be as bad as they thought or that only minor adjustments might need to be made.

Commissioner O'Connor noted that based on the testimony, it appears that there will not be a lot of compromise. He stated that he believes the applicants are looking for a decision so they can move on. He added that the applicants have spent a lot of time making modifications and compromises, and he feels the Commission has seen many of these types of proposals where it can envision what the second story will look like.

Commissioner O'Connor continued that the fact that the proposal meets all of the Codes and that there are some extenuating circumstances with the way the lot is laid out and the way the original house is built gives the Commission enough information to make a decision. He indicated that he believes the Commission's decision will be appealed either way but that the Commission owes it to the applicants to give them a decision. He noted that the applicants have chosen not to compromise or go to mediation or spend any more money. He added that the applicants have already invested a lot of money in the project and that even if another compromise were reached, more money would be involved.

Chair Olson stated that he came to the meeting wanting to find a compromise, and he thought he had one in what the appellants had written. He noted that it appears to him that the appellants are willing to sit down and talk, but the applicant has refused to do so. He stated that he could make a decision at this point.

Commissioner Pentin indicated that his impression of both sides is that the appellants have said they were not willing to compromise until tonight, and the applicants have been told over and over that the appellants are willing to take this to the n<sup>th</sup> degree. He stated that he feels the applicants are asking for an answer, whether the Commission denies or approves the proposal, because they are ready to move forward.

Commissioner Pearce agreed and stated that she was not willing to concur with a motion that forces the applicants to do something they do not want to do. She added that she does not think the money issue is relevant, but she believes the applicants feel mediation or the story poles will not get them anywhere. She indicated that she thinks everyone is ready for a decision. She noted that the level of the vitriol she saw in the Zoning Administrator hearing minutes was nothing she has seen in a long time, and although she does not have all of the information she could possibly have, she has enough information to make a decision.

**Commissioner Blank amended his motion to uphold the appeal.**

**Commissioner Narum withdrew her second of the original motion.**

**Chair Olson seconded the amended motion to uphold the appeal.**

Commissioner Pentin indicated that he would not support the amended motion. He noted that in everything he has read and from what has been presented, he would deny the appeal.

Commissioner Blank stated that the reason he would like to uphold the appeal is because this is a unique property and a unique situation. He indicated that having walked and driven that neighborhood, he had a very difficult time seeing where the placement of the addition would be. He noted that if this was simply permitted by zoning and the Code, the Commission would not have to be involved; the application would just go to staff who would go through the checklist.

Commissioner Pentin stated that he does not believe this is what happened because there have been modifications proposed which the applicants have implemented such as moving and redesigning the additions and reducing the size of the windows and providing screening. He indicated that he thinks there has been movement for what the applicants need to do within their rights, and this is what they are asking for.

Commissioner Blank stated that he feels there has been movement as well, but not enough. He indicated that he is concerned about the visual impact the addition will have on a large portion of the neighborhood. He noted that if the applicants want a decision tonight, they will have an appealable decision. He added that he firmly believes the lot is unique.

Commissioner O'Connor agreed that it is a unique lot because it does meet all regulations. He noted that they are not building over out the entire existing first floor and are staying well back and within the 20-foot setback. He added that the CC&R's are clear as well.

Commissioner Blank stated that the CC&R's were not as clear as they were portrayed as they state that one has the right "not to exceed" rather than one has the right to "x".

Commissioner O'Connor stated that "not to exceed two-and-one-half stories" indicates that one can build two stories.

Commissioner Blank agreed that it allows two stories but that it uses limiting language as opposed to permissive language.

Commissioner O'Connor noted that there is no request for a variance and that this is where he has difficulty.

Commissioner Narum stated that if the lot were located on the straight portion of the street and not at the end of the cul-de-sac, this would be a cut-and-dry decision; however, because of the way the house is sited on the lot and the Perrys' lot, she finds there needs to be some judgment applied. She indicated that she is not as concerned about those on the back side on Robin Court and that the one she is most concerned about is the Perrys.

Commissioner Pearce stated that these are some of the hardest things the Commission does as there is never anything that makes everybody happy, especially not in this case. She indicated that the Commission always searches for compromise, for community versus property rights, and there is discretion. She stated that for her, the applicants are not asking for any variances, there is a current setback, they have altered the second story so it is more toward the front, they have modified the windows, and they have articulated the roof. She noted that the compromise the appellants have put forth is that the applicant cut the addition in half, not have an addition at all, or move, neither of which is much of a compromise. She indicated that she was inclined to support the application.

Commissioner Blank stated that he agreed but that there is not enough information to make a decision, and that is the reason he made the original motion. He added that it would be helpful to see what was proposed before and the change after and that he feels the Commission is making a decision without the data it needs.

Commissioner Pentin stated that the Commission talks about the applicant being within the structure, rules, and zoning; and looks at the community and the effects on the neighbors; and goes into view sheds, screening, and privacy. He indicated that what is important is that the applicants are doing this for a reason too: they are telecommuting, working from home, and spending more time with their children, all of which would keep the family in that home. He added that community is also within the home.

Chair Olson stated that the motion on the floor is to uphold the appeal.

#### **ROLL CALL VOTE:**

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

The motion failed by a vote of 2 to 3.

**Commissioner Pearce moved to deny PAP-146, thereby upholding the Zoning Administrator's approval of Case PADR-2090, subject to conditions of approval listed in Exhibit A.**

**Commissioner Pentin seconded the motion.**

Commissioner Narum proposed an amendment to Condition No. 3 to change the construction hours from “8:00 a.m. to 5:00 p.m., Monday through Saturday” to “8:00 a.m. to 5:00 p.m., Monday through **Friday.**”

**Commissioners Pearce and Pentin accepted the amendment.**

**ROLL CALL VOTE:**

**AYES: Commissioners Narum, Pearce, and Pentin.**

**NOES: Commissioners Blank and Olson.**

**ABSTAIN: None.**

**RECUSED: None.**

**ABSENT: None.**

Resolution No. PC-2010-22 denying the appeal, thereby upholding the Zoning Administrator’s approval of PADR-2090, was entered and adopted as motioned.

Chair Olson advised the appellants that they had 15 days to appeal the Commission’s decision to the City Council.

**b. PUD-02-07M and PCUP-210, Pleasanton Gateway, L.L.C.**

**Application for a modification of the Bernal Property PUD development plan, and for a Conditional Use Permit for the operation of a grocery store and drive-through uses for a mixed-use development including approximately 129,370 square feet of commercial/ retail floor area and approximately 588,781 square feet of office floor area on an approximately 39.22-acre site located at 6750 Bernal Avenue, between the northbound I-680/Bernal exit ramp and Valley Avenue. Zoning for the property is PUD-C (Planned Unit Development – Commercial) District.**

**Also consider the Negative Declaration prepared for the project.**

Marion Pavan presented the staff report and described the scope, layout, and key elements of the project.

Commissioner Pentin inquired if the landscaping on the freeway exit ramp will stay as is.

Mr. Pavan replied that it would stay but that CalTrans has the option to remove it. He added that should this occur, the project’s landscaping will be able to stand on its own.

Commissioner Blank inquired whether limiting drive-through to prescription only is a PUD restriction or a business practice.



Mr. Pavan replied that this reflects a condition that staff has applied to a previous application for a pharmacy with a drive-through.

Commissioner Blank inquired if this would be a 24-hour drive-through pharmacy.

Mr. Pavan said yes.

Commissioner Blank referred to the sign program and stated that during the past years, this Commission has struggled with window signs. He noted that the Commission has specifically restricted paper signs, but owners have resorted to putting up garish signs and frames that are offset from the window by three feet, and there is nothing the Commission can do about it. He inquired if this will be addressed as part of the master sign program.

Ms. Pavan replied that window signs will be addressed, and signs that are set back three or more feet from the window could also be addressed; however, it would be difficult to control and implement.

Commissioner Blank inquired if there was an estimate of when the first phase would begin, assuming it was recommended for approval tonight and subsequently approved by the City Council.

Mr. Pavan replied that the applicant has indicated that they want the Safeway to open and begin operation by November of next year.

Commissioner Blank noted that provisions would be made for electric charging of cars and that the number of Federal- and State-funded programs to increase the number of charging ports is growing. He inquired if the City has guidelines in place to plan for an electric versus fossil fuel future.

Mr. Pavan replied that more and more electric vehicles and hybrids are appearing on the market and more and more companies are providing these types of vehicles. He indicated that the City does not have specific guidelines with respect to the minimum number of charging ports and that these would be looked at on a case-by-case basis. He added that any of the parking spaces that are in close proximity to the building could be used as charging ports.

Commissioner Blank noted that homes or large buildings are being approved to be photovoltaic ready so that several years down the line, someone who wants to put in a photovoltaic system would be able to do so. He stated that in the same manner, any parking lot could be stubbed out and made ready to have a power plug.

Mr. Pavan stated that the City does not require all the parking lot to be stubbed out but only those spaces closest to the office building.

Commissioner Blank inquired whether parking row should have one stub so as to feed spots in that row. He indicated that he felt there is an opportunity to build in the infrastructure at construction time, which would cost a lot less than doing it after the fact.

Mr. Pavan indicated that there is a condition of approval requiring a stub out, conduit, and pull strings in those spaces closest to the office buildings only. He added that the applicant needs to do the installation.

Commissioner Pentin stated that the last time this project came before the Commission, it was around 58,000 square feet with a possible expansion of 5,000 to 7,000 square feet. He inquired if this was no longer the case.

Mr. Pavan replied that Safeway reduced the area to 58,000 square feet because the company feels that size can accomplish its business plan for this store. He noted that should it expand to 65,000 square feet in the future, the applicant would need to submit the plan to the Planning Division to ensure sufficient parking space accommodations.

Commissioner Pentin inquired where the storm water runoff is in the park property and inquired if the ponds were those by Valley Avenue. He further inquired if these were new ponds.

Mr. Pavan confirmed that these are the ponds by Valley Avenue but that there are no new structures or facilities to handle storm water runoff. He indicated that the applicant will need to provide bio swales and pipes and ensure water is retained long enough to achieve its settling function.

Commissioner Pentin referred to the two new crosswalks that lead to the Bernal Corporate Park and one on the corner of Valley Avenue and Bernal Avenue. He inquired if there were any restrictions or stipulations against Fairgrounds parking.

Mr. Pavan replied that this would be up to Safeway Stores and that there are no conditions in the PUD addressing Fairgrounds parking.

Commissioner Pentin noted that according to the parking requirements for the entire facility, it is over-parked by 200 spaces, especially in the retail portion of the complex. He inquired if the impact of that corner has been brought into the traffic study, considering the Good Guys and Fairground activities.

Mr. Pavan replied that the traffic study did not analyze Fairgrounds parking. He indicated that there is a condition that states that the applicant can request the City Council to have the Vehicle Code enforced on this property. He noted that he has seen signs referring to towing vehicles that are not supposed to be parked in certain areas.'

Commissioner Blank noted that whenever there is a Fair, Bernal Corners pulls signs out which allow one-hour parking maximum for customers, after which cars would be towed. He indicated that this appears to work.

Commissioner Pentin noted that Condition No. 42 of Exhibit A on Transportation Systems Management (TSM) refers to the project applicant or developer or property owner. He inquired if this was common boilerplate wording or because the City does not identify the person responsible and if it leave a loophole.

Mr. Pavan replied that it is standard boilerplate language and covers all options.

Commissioner Blank inquired who the producer of the video simulations was.

Mr. Pavan replied that the video simulations were prepared by the applicant.

Commissioner Pentin referred to Condition No. 59 which states that the existing 18-inch storm drains stubbed to the property and Bernal Avenue shall be abandoned per City standard requirements. He stated that he understands the storm water and grading will take it to the ponds, but he inquired if the storm drains would simply be abandoned but would still be there and would be able to be brought back into operation if there were ever any issues or problems with water in the area.

Mr. Pavan referred the question to Wes Jost, Development Services Manager.

Mr. Jost stated that the storm drain is basically stubbed for future use. He indicated, however, that whatever is proposed for the site must be treated, and, therefore, the abandoned storm drains would more than likely not be used in the future.

Commissioner Pentin referred to Condition No. 73 which states that minor changes to the plan can be allowed subject to the approval of the Director of Community Development and asked for a definition of "minor."

Mr. Pavan stated that staff has attempted in the past to define "minor" and had no success, and that "minor" is determined on a case-by-case basis. He explained that a proposed modification is judged against the conditions and approved plans, and then a determination is made as to whether the change is minor or major and requires more scrutiny and potentially a hearing before the Planning Commission.

Commissioner Pentin inquired if the sign program, size of windows, or illumination would be considered major or minor.

Mr. Pavan stated that it would likely require a modification to the PUD. He noted that changing the trim or window colors would be considered minor.

Commissioner Pearce referred to the Fehr and Peers Transportation Impact Study, which was updated in November, and stated that she did not believe there were any

impact studies once it was determined there was no longer going to be a gas station but would instead be some sort of drive-through. She requested more detail in connection with the statement on page 24 of the staff report that the City's Traffic Engineer states that the mitigation measure is still applicable.

Mr. Pack stated that staff considered this to be a minor change. He explained that they looked at what the applicant proposed, determined that the traffic impacts were not significantly different than what was proposed with the gas station, and a decision was made that no further analysis was necessary.

Commissioner Blank stated that as one who frequents Bernal Corners, there have been many occasions when he has had to wait five minutes just to get a pump. He indicated that he finds it difficult to imagine that a drive-through would not generate as many trips. He inquired if it would change the flow patterns because of the drop in traffic.

Mr. Pack replied that when staff looks at the traffic impacts, they look at the worst case scenario to determine what sort of mitigation might be needed. He explained that staff determined that if there were fewer trips, the mitigation would already be identified and would not be changed.

Commissioner Pearce referred to the page 3 of the November 10 study which talks about project trip generation. She noted that in comparing a pharmacy with a drive-through versus a service station with a drive-through, she was not certain that a pharmacy can be compared to a service station in terms of PM peak-hour trips because she thinks there would be significantly more traffic with a pharmacy drive-through than with a service station.

Mr. Pack stated that he agrees with Commissioner Pearce's statement but that those two were not an either/or situation. He indicated that staff looked at the full phase of the gas station, then looked at a Phase I with the gas station still there and also with the pharmacy with the drive-through. He noted that the pharmacy with a drive-through has similar trip rates and there is not a significant difference between the two. He added that overall, the trips were reviewed and staff found that there are significantly lower trips, not only from the original full phase, but also from the original application with the 700,000 square feet.

Commissioner Pearce referred to the trip-generating rate table and PM peak-hour trips with the assumption that different uses would have different AM and PM peak-hour trips. She inquired how taking out the service station and adding a fast-food or restaurant type of drive-through would specifically affect the PM peak-hour trip rates. She noted that from the Fehr and Peers study, it looks like there are significantly more PM peak-hour trips generated with a pharmacy drive-through than with a service station.

Mr. Pack stated that when staff looked at the gas station with the eight service pumps, they also looked at the pharmacy. He indicated that now the applicant has replaced the

gas station with a drive-through fast food, and the difference between the drive-through fast food and the gas station are not significantly different. He noted that what the Commission is seeing is fewer trips than what is actually shown in the study, and as a result, mitigations remain the same.

Commissioner Pearce stated that it looks like Fehr and Peers analyzed the parking on page 25 of the study. She indicated that she assumed this was done at the same time that transportation impacts were analyzed. She inquired if there was a new analysis of parking in regard to the new pharmacy and fast food.

Mr. Pavan replied that this was looked at carefully and a determination was made that the parking demand analysis done by Fehr and Peers was comparable. He indicated that this project, as now proposed and even with the drive-through fast food, is still over-parked according to the traffic consultant.

Commissioner Narum inquired if it would be considered a major modification if, after PUD approval, someone wants to lease the building on Pad 4 and wants it to look different than what is shown in the drawings.

Mr. Pavan replied that this would be considered a major modification. He added that the condition specifically states that no franchise, thematic, and comparable architecture would be presented to the Commission.

Commissioner Narum inquired if changing the paint colors would be considered a major modification.

Mr. Pavan replied that he would look at the color palette for the project and if the change in color is comparable and attractive, he would be inclined to consider this a minor change. He noted, however, that if a change to the building volume, roofline, or something comparable is proposed, this would push it into something more significant and would be considered major. He confirmed that this would also apply to the other pads as well.

Mr. Dolan added said it is a judgment call and that staff has a strong sense of self-preservation such that if staff believes it will be controversial, they would make it a major modification.

Chair Olson referred to Condition No. 44 and noted that No. 22 under Permitted Uses/Retail indicates "Drugstores or prescription pharmacies, no drive-through" and suggested that "no drive-through" be struck.

Mr. Pavan stated that if a pharmacy were to come in with no drive-through, it would be a permitted use; however, if the pharmacy includes a drive-through, it becomes a conditional use.

Chair Olson referred to Condition No. 44, Conditional Uses/Retail No. 7, and stated that he is disappointed that this project does not include the gas station but that he is glad to see that it has been left in as a permitted use.

Commissioner Pentin corrected that this is a conditional use.

Chair Olson inquired if a self-service gas station could be installed at some point in the future.

Mr. Pavan said yes. He added that not only is it a conditional use, but would also require a major modification.

Referring to signs, Chair Olson stated that while he is opposed to flashy signs in the window of a bank, he grew up in the grocery business and this would be the first grocery store in the country that would not be allowed to put a sign in the window indicating what the daily specials are. He stated that he would be disappointed if the City told Safeway it could not put a sign in their window.

Commissioner Blank stated that he was also disappointed to see that the gas station was no longer a part of the proposal. He inquired whether, given this, would the Jack-in-the-Box people be screaming about competition should a fast-food restaurant come in on Pad 4; and would the Starbucks Coffee people be screaming about competition if a Peet's Coffee came in. He expressed concern that there is a level playing field and if it is a permitted use, competition is good in business. He indicated that he wants to ensure the City is not establishing artificial barriers.

Mr. Pavan stated that he has encountered the question before by other businesses. He noted that when the Asian restaurant on Main Street opened, the existing restaurants complained. He indicated that staff's statement was that this is part of a business of commerce.

## **THE PUBLIC HEARING WAS OPENED.**

Scott Trobbe, Vice President for Development, Pleasanton Gateway, LLC, stated that between the staff report and working with the various departments in the City, it is refreshing to note that the dialogue and communication are always open and responsive. He indicated that he would discuss the project geographically and then turn over the presentation to Ken Rodrigues, project architect, and then to Jim Reuter from Property Development Centers, which has a Safeway division.

Mr. Trobbe presented an aerial of the site, stating it is very different from ten years ago because there are now two very vibrant communities, the park has started to come into play, and infrastructure has expanded. He stated that all this gave them an opportunity to re-look at the property for what might be a better solution and opportunity for the City. He indicated that the area is amenity-challenged from both services and a shopping

experience and that they are very happy to look at putting this retail project together with the office project.

Mr. Trobbe stated that they reached out to two homeowner associations that are directly either across the street or in the neighborhood, met with citizens at the Greenbriar apartments directly across the street, spoke with people on the west side of I-680, had presentations with the Pleasanton Chamber of Commerce and their subcommittees, and met with the Pleasanton Downtown Association several times in order to understand their interests and their concerns. He noted that what is important is that he is a stakeholder as well, not a developer who would do the project and then leave town. He indicated that they still have 29 acres in the area that they would like to do something with.

In summary, Mr. Trobbe stated that, taking into account that they are amenity-challenged and given the kind of architectural project they put together, combined with Safeway Stores, they have developed a nice project that all stakeholders can be proud of.

Ken Rodrigues, project architect, noted that they had changed a couple of things from their last presentation, including the substitution of the service station location with a building. He stated that what is in the packet is a very nice outdoor dining spot with a couple of restaurants and a patio which will be utilized up to closing time. He noted that they also incorporated interesting night lighting and trellis features, and a nice pedestrian and trellis connection to the neighborhood which is a big comfortable walking loop for retail, window shopping, outdoor dining, outdoor seating that links around the entire site.

Mr. Rodrigues noted that they have embellished and enhanced landscape features and connection, especially the landscaped feature located across from the residential. He pointed out the location of future expansion for Safeway and noted that they are over-parked. He stated that South Bay Development Company, the office developer, was concerned about the look of the rear of the buildings and that a 360-degree architecture was proposed with a dense landscape screening that would screen the proposed drive-through, and delivery areas would be tucked back in a notch and landscaped area.

Mr. Rodrigues stated that the other request by the Commission was a rendering from the corner with a complete photo simulation. He indicated that they have samples of all of the colors, materials, and said he is proud to say that the Safeway will be very nice looking, including having the ability for outdoor sales which is geared to activate the pedestrian edge. He added that they also have outdoor seating and dining, which allows the areas to become neighborhood spots. He presented a picture of the trellis feature, with lighting, landscaping, outdoor dining coming right up to the street edge, and low stone screen walls. He agreed that Fairgrounds parking would not be allowed and that their security would take care of this. He added that the Commission had requested changes in building elevations, and they incorporated more of the vertical elevation

change as well as a plan view, more arcade and lifestyle features, trellis pieces, glass and aluminum, and canvas which will be an asset to the community.

Mr. Rodrigues presented the view from Bernal Avenue looking toward Pad 1, showing the landscaping. He explained that the Commission had asked them to be very detailed in the landscape plan and that every tree shown corresponds to the trees proposed on the landscape plan. He briefly described the main entrance off of Bernal Avenue, Bernal Corporate Park across the street right with the main driveway, a view of the building from the main entry, the next building over which could be a bank, and the corner building added after the gas station was removed. He presented a view from looking back from Bernal Avenue right at the off-ramp from the freeway. He stated that the landscape features are accurate and that any potential drive-through is completely screened by the landscaping.

Mr. Rodrigues stated that they also wanted to include accurate elevations of Safeway and proposed signage. He indicated that in response to an inquiry from two Commissioners regarding what the landscaping would look like back along the freeway, he stated that each tree shown on the landscape plan is an accurate depiction of what it would look like in five years.

Jim Reuter, Vice President of Development, Property Development Centers (PDC) which is a Safeway Company, stated that his presentation will focus on the interior of the store, green development operations, and Safeway as a community partner in Pleasanton. He stated that PDC was formed about two years ago to develop, own, lease, and manage retail shopping centers, and Safeway is one of its primary anchors. He stated that the company was formed to take advantage of market conditions, the lack of financing, and the lack of developers to be able to perform; and it was a way for Safeway to get into the market and get stores open and develop high quality projects. He presented pictures of the inside of their new lifestyle store, a grocery section featuring over 300 organic products with their "O" brand. He indicated that they like to buy local produce and have a bright line green product. He presented the floral, meat, seafood, and ready meal sections, wine selections, and pizza ovens. He noted that their lifestyle store is an exciting opportunity where they would roll out new products and a new areas of the store.

Mr. Reuter stated that about ten years ago, Safeway and PG&E partnered and created some energy efficiency programs which have provided rebates in excess of about \$38 million. He added that Safeway wanted to save money and offered rebates for those who can reduce their carbon footprint. He noted that the energy efficiency programs reduce 8.5 million megawatts of energy use; their lighting focuses on product rather than on the store, their LED signs reduce energy by 80 percent, they use wind energy for their corporate offices in San Francisco, and they have participated in a number of energy projects over the last couple of years.

Mr. Reuter then presented a breakdown of their components for recycling: six percent from the food bank, 46 percent from cardboard, and 20 percent compost. He indicated



that they make use of everything they can and noted that they are trying to convert grease to bio fuel for their trucks. He stated that they are one of the original members of the U.S. Green Building Council since 2004 and that they build their current prototype to a Silver LEED rating.

Mr. Reuter stated that Safeway is a community partner based in Pleasanton and has over 3,600 employees at their headquarters. He indicated that their new shopping center employs about 350 full and part time employees and that the project proposed is about a \$40 million project. He added that they donate to a variety of about 75 community organizations.

Commissioner Blank stated that in the summary that Mr. Pavan provided, the Commission spent a lot of time discussing what the freeway off-ramp would look like. He indicated that he was a little surprised with the 5 year view. He stated that the sense of the Commission was that when people came off of the freeway, the Commission did not want it to look like a truck stop. He added that he was surprised about the vegetation in the video rendering, which was almost non-existent, and he felt there were huge gaps in it. He said when making the turn off of the freeway, the site is astonishing beautiful in the renderings, but the ride down the freeway off-ramp does not look very good and he wondered if additional landscaping was needed.

Mr. Rodrigues stated that the video is not as current as the simulation. He indicated that it was shot last week and that Safeway could not be seen when riding down the off-ramp.

Commissioner Blank stated that assuming CalTrans comes in five years from now and wants to widen the freeway and removes the landscaping, Safeway will be visible.

Mr. Rodrigues explained that there is also groundcover, shrubbery, and tree growth, in addition to an entire layer of trees which his rendering shows from the back of the Safeway and does not include any of the CalTrans cover.

Commissioner Blank stated that the Commission wants to have it massed assuming there is no CalTrans cover because CalTrans could remove that.

Mr. Rodrigues stated that there will be shrubbery growing high as shown in the landscape plan.

Commissioner Blank stated that he think it needs more filling in.

Mr. Rodrigues reiterated that the rendering does not include the CalTrans overlay. He stated that CalTrans could eliminate all of the landscaping within five to ten years, and there would be trees or shrubbery that Safeway would have maintained it so it does not go into the right-of-way.

Commissioner Blank concluded by stating that the landscaping is excellent when making the turn, but felt there was more work to do when coming down the ramp.

Commissioner Blank inquired if, with a large parking lot area, there would be video camera surveillance or on-site guards during hours when the center is not in operation for Phase I or II.

Mr. Trobbe replied that if they have a Phase II with office, he thinks this would be a tenant decision and not something a developer would enforce. With respect to Phase I, given the Safeway Store will be a 24-hour store, he stated that he does not think there will be security for this.

Commissioner Narum requested someone to discuss traffic with the drive-through bank and the drive-through fast food and how it would work. She stated that cars would come out from the bank and cars would come into the drive-through. She inquired how the circulation would work during lunch time.

Mr. Rodrigues replied that they would fine-tune this depending upon who the users are. He noted that certain drive-through's like banks typically do not have a lot of traffic, while a fast food restaurant might. He indicated that they would look at creating a small "pork chop" island landscape feature that would separate the two so there would not be any conflict.

Chair Olson stated that he is in the banking business and that it is likely that a bank going into the site would not want a drive-through. He added that they would service via ATM's and that most of the traffic would be walk-up. He indicated that they had considered this and that if it was not needed, it would be turned into a landscaped area.

John Moore stated that he is a member of the Walnut Hills Homeowners Association which borders the development on one side and that Mr. Trobbe reached out to the association and gave a presentation; concerns were addressed and modifications were made to the plan. He agreed that Fairgrounds parking could be an issue. He noted that developing the crosswalk from Bernal Corporate Park to the development is important but that creating a secondary crosswalk which would be closer to the Fairgrounds would invite more people to park in the lot. He added that their homeowners development has a couple of round-about's and that he has witnessed people driving around them doing some pretty amazing things. He inquired if there could be some additional signs to educate people on how they should properly negotiate a round-about, which would be helpful because he has seen drivers making a U-turn in the wrong direction in the round-about.

Mr. Moore noted that Condition No. 18.b. of the conditions of approval states that tenant improvement activities taking place within a completely enclosed structure shall be limited to certain hours and that contractors operating past 5:00 p.m. shall only use the Bernal Avenue driveway to enter and exit the site. He requested that it be made part of

the plan that traffic solely use the Bernal Avenue exit, which their homeowners and neighbors would be appreciative of.

Mr. Trobbe echoed these considerations and stated that it would not be good for construction traffic to come up Sunol Boulevard, make a left at Valley Avenue, and then come through those round-about's. He added that they would also be going right past Hearst Elementary School, which would not be a good thing.

Mr. Trobbe concluded by stating that the project is tremendous and would be an asset to the City. He then thanked the Commissioners for their time.

## **THE PUBLIC HEARING WAS CLOSED**

**Commissioner Blank moved to find that the proposed project will not have a significant environmental impact and that the Mitigated Negative Declaration is appropriate, and to recommend approval of the Initial Study/Mitigated Negative Declaration; to make the PUD Development Plan Findings stated in the staff report and to recommend approval of Case PUD-02-07M, subject to the conditions of approval shown in Exhibit A of the staff report; and to make the Conditional Use Permit Findings stated in the staff report and to recommend approval of Case PCUP-210, subject to the conditions of approval shown in Exhibit B of the staff report.**

**Commissioner Narum seconded the motion.**

Commissioner Narum referred to Condition No. 44.a. and requested that "tobacco stores" be removed from this condition.

Commissioner Pentin stated that he would support the request if it were a cigarette store, but he was opposed to removing a tobacco store.

Commissioner Blank stated that when he read it, he thought it was more along the lines of a pipe and cigar store.

Commissioner Narum requested that it be stated that way.

Commissioner O'Connor stated that he believes the people who run the shopping center will do what is best, such that if they do not want an adult book store or a cigarette store or any other store, they will do the right thing. He indicated that he did not think it should be micromanaged unless there is something prohibited citywide.

Chair Olson agreed.

Commissioner Narum referred to Condition No. 34.a. under the sign program and stated that she sees a huge opportunity for the monument signs on Bernal Avenue to tie into the Downtown. She indicated that the developer has indicated a willingness of this, and

she inquired if it would make sense to have this portion of the signs reviewed at the Planning Commission level, similar to what was done with the Kolln Hardware store.

Commissioner Blank inquired what impact this would have.

Mr. Pavan stated that the application, drawings, and conditions would be reviewed by staff and the Zoning Administrator's action would then be forwarded to the Commission who can appeal the decision.

Commissioner Narum stated that having a staff approval and then appealing it and scheduling it for a Planning Commission meeting would entail a longer processing time versus having it come immediately before the Commission.

Commissioner Blank agreed with Commissioner Narum.

Commissioner O'Connor suggested that it could be agendaized under the Consent Calendar.

Commissioner Narum referred to the workshop discussion regarding the back side of Safeway. She inquired why the Commission would not want people to know there is a Safeway off of the freeway ramp, as we would want people to stop and shop here.

Commissioner Blank stated that the Commission wanted the store to be a local store and not have people necessarily getting off of the freeway with their 18-wheeler trucks pulling into the store and then pulling back out.

Commissioner Narum inquired why a large "S" logo could not be placed on the back of Safeway.

Commissioner Blank voiced his opposition to this.

Chair Olson stated that other buildings could be seen from the freeway.

Commissioner O'Connor supported Commissioner Narum's suggestion, noting that if the City could bring in additional dollars, it would benefit the City, and other buildings will be seen.

Commissioner Blank suggested this be looked at as part of the sign program.

Commissioner O'Connor agreed it was part of the sign program, but he did not feel the landscape program should be increased to be so dense that a sign on the sign program cannot be seen.

Mr. Dolan referred to Condition No. 31 which deals with screening along the freeway. He stated that staff thought some changes needed to be made to the planting proposed to be more in line with some of the feedback received at workshops but did not require a

complete screening. He indicated that the building is relatively large and that they would like to break up the mass and get some depth to some of the landscaping proposed; hence, clusters were discussed to break it up which is more of a visual thing than a “hiding” thing.

Commissioner Blank stated that he felt this was a good compromise.

The Commission agreed to review this as part of the sign program and urged the developer to return with a sign that will be seen.

Commissioner Blank inquired if the construction route should be specified.

Commissioner Pentin stated that Safeway is required to build the first entrance into the retail property off of Valley Avenue for construction purposes; however, he could see not allowing any construction to come from the other sides. He indicated that part of the reason for having the first entrance built was to alleviate construction traffic on Bernal Avenue so as not to have traffic go down to the housing development and down Valley Avenue.

**Commissioner Blank amended his motion to add that Condition No. 4 be amended to require the master sign program to come before the Planning Commission for review and approval.**

**Commissioner Narum supported the additional condition and amended motion.**

**ROLL CALL VOTE:**

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

**NOES: None.**

**ABSTAIN: None.**

**RECUSED: None.**

**ABSENT: None.**

Resolutions Nos. PC-2010-23 recommending approval of the Negative Declaration, PC-2010-24 recommending approval of PUD-02-07M, and PC-2010-25 recommending approval of PCUP-210 were entered and adopted as motioned.

**7. MATTERS INITIATED BY COMMISSION MEMBERS**

There were no matters initiated by Commission Members.

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

**a. Future Planning Calendar**

Commissioner Blank requested confirmation that the Commission would hold its regular meetings on September 15, 2010 and September 29, 2010.

Mr. Dolan confirmed the meeting dates and noted that a special meeting on September 22, 2010 is still under consideration.

**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 Olson adjourned the Planning Commission meeting at 10:35 p.m.

Respectfully,

JANICE STERN  
Secretary