



PLANNING COMMISSION MINUTES

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

APPROVED

Wednesday, February 25, 2009

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

CALL TO ORDER

The Planning Commission Regular Meeting of February 25, 2009, was called to order at 7:00 p.m. by Chair Pearce.

1. ROLL CALL

Staff Members Present: Brian Dolan, Director of Community Development; Michael Roush, City Attorney; Donna Decker, Principal Planner, Rosalind Rondash, Assistant Planner; Natalie Amos, Assistant Planner, and Maria L. Hoey, Recording Secretary

Commissioners Present: Chair Jennifer Pearce, Commissioners Anne Fox, Kathy Narum, Greg O'Connor, and Arne Olson

Commissioners Absent: Commissioner Phil Blank

2. APPROVAL OF MINUTES

a. February 11, 2009

Commissioner Narum noted that she, not Chair Pearce, was the one who made the comments in the second and third full paragraphs of page 6 and requested that the correction be made.

Commissioner Olson requested that the first sentence of the first full paragraph on page 10 be modified to read as follows: "Commissioner Olson inquired whether the antennas were ~~directional~~ unidirectional, and if so, which direction they were pointing to."

Chair Pearce stated that Commissioner Blank had requested that the first sentence of the paragraph following “The public hearing was closed” on page 8 be modified to read as follows: “Chair ~~Blank~~ Pearce recommended denying the appeal...”

Chair Pearce requested that the second sentence of the last paragraph on page 10 be modified to read as follows: “She stated that she thought that childcare was not as controversial or as well discussed...”

Commissioner Narum moved to approve the February 11, 2009 Minutes, as amended.

Commissioner Olson seconded the motion.

ROLL CALL VOTE:

AYES: Commissioners Fox, Narum, O’Connor, Olson, and Pearce.

NOES: None.

ABSTAIN: None.

RECUSED: None.

ABSENT: Commissioner Blank.

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

5. CONSENT CALENDAR

a. PCUP-237, Rimma Radayeva, Radayeva Music Studio

Application to modify a previously approved Conditional Use Permit (PCUP-154) for Radayeva Music Studio located at 1228 Quarry Lane, Suite A, to increase the number of instrument and vocal instructors from one to five at any one time and to extend the hours of operation from 10:00 a.m.-9:00 p.m. to 10:00 a.m.-9:30 p.m. Zoning for the property is PUD-I (Planned Unit Development – Industrial) District.

Chair Pearce indicated that this item would be pulled from the Consent Calendar and considered as the first item under Public Hearing and Other Matters.

6. PUBLIC HEARINGS AND OTHER MATTERS

**PCUP-237, Rimma Radayeva, Radayeva Music Studio
Application to modify a previously approved Conditional Use Permit (PCUP-154) for Radayeva Music Studio located at 1228 Quarry Lane, Suite A, to increase the number of instrument and vocal instructors from one to five at any one time and to extend the hours of operation from 10:00 a.m.-9:00 p.m. to 10:00 a.m.-9:30 p.m. Zoning for the property is PUD-I (Planned Unit Development – Industrial) District.**

Ms. Rondash presented the staff report and described the scope, layout, and key elements of the application.

Commissioner Fox noted that the narrative in Exhibit B states: “Our work day begins at 4:00 p.m. as our students are children who attend school daily” and inquired why the operator starts operations at 10:00 a.m. and if there were adult students in the morning. Ms. Rondash replied that this was the time approved in the original permit to allow the flexibility to take in adult students.

Commissioner Fox inquired if students were transported by parents or if the applicant picked them up from the school site. Ms. Rondash replied that she believed parents dropped the children off at the facility and deferred the question to the applicant.

Commissioner Fox inquired if the lessons were for one hour and if the children left after their lesson. Ms. Rondash replied that the lessons were approximately one hour long.

Commissioner Fox referred to the parking for the gymnastics facility and inquired if the parking lots were connected. She further questioned whether or not the four spaces in front of the facility were allocated to the studio. Ms. Rondash replied that the City does not allow allocation of parking spaces to any one suite and added that staff was indicating that the parking spaces were in close proximity to the facility’s entrance from the street and that they appear to be vacant all the time and, therefore, readily available for students. With respect to the connectivity of the parking lot, Ms. Rondash stated that fencing throughout the development delineates the parking spaces and that parking across the facility in front of 1236 Quarry Lane was addressed in the flyer that forms part of the added conditions in the staff memo distributed earlier. She noted that the applicant has already posted a sign in her suite instructing patrons to park only in front of the studio and not across the street.

Commissioner Fox inquired why there was no condition requiring that children 12 years and younger be signed into and out of the facility by their parents, guardian, or adult supervisor. Ms. Decker replied that this was not required in the original Conditional Use Permit. She noted that because the use has been successful and were only an hour long, staff did not believe there was a risk that

would require the signing in and out. She added that the condition can be added for consistency should the Commission so desire.

THE PUBLIC HEARING WAS OPENED.

Rimma Radayeva, Radayeva Music Studio, stated that she performed administrative work in the studio during weekday mornings and that there were no students in the facility at that time. She added that weekends were flexible with classes starting between 10:00 a.m. and 11:00 a.m. She noted that she had placed a sign on her door instructing her patrons not to park on the spaces in front of 1236 Quarry Lane and that she believed the owner at 1236 Quarry Lane was satisfied with the sign. She indicated that she was amenable to adding a condition in her policy for students regarding parking restrictions.

Chris Studzinski, owner of 1236 Quarry Lane, expressed his objection to having non-industrial uses in the business park. He noted that there is a stucco business and roofing company with large trucks next door to the piano studio and that he was concerned about the children's safety playing in the area. He stated that the studio has expanded, and children wait for their parents outside to pick them up. He added that he has had parking and loitering problems for many years and described a situation where a child threw tanbark at his windows while a parent was standing by. He noted that five teachers at one time would be using five parking spaces, and five students would require an additional five spaces. He acknowledged the conditions regarding parking but doubted they could be enforced. He indicated that while he agreed music instruction is great, he was opposed to the expansion because he did not believe an industrial park was a good location for the facility. He suggested that the business relocate to a more appropriate location such as at the Vintage Hills Shopping Center where he believed there was already a dance studio and where the students can wait for the parents in Tawny Park across the street. He noted that the property association which supports the studio is not the business park association but the tenant's building association.

THE PUBLIC HEARING WAS CLOSED.

Commissioner Fox expressed her reservations about the operation and questioned some of the use permits approved by the Commission in industrial areas. She noted that the first businesses approved in industrial areas were fairly benign and did not present a problem until Pump-It-Up came in. She indicated that she could not support the application because of impacts to light industrial/manufacturing districts and that she would prefer to see the studio locate in a retail zone or commercial district Downtown or similar locations.

Chair Pearce inquired what the recourse of the adjacent property owner would be if conditions were added but not followed by the applicant. Ms. Decker replied that as with all other approvals, this would be a Code Enforcement matter.

Commissioner O'Connor inquired if there have been complaints received from others in the business park. Ms. Decker replied that none had been received.

Commissioner Narum recalled a recent situation where the Planning Commission had upheld the appeal of the Zoning Administrator's action regarding the trellis because parking had been designated. She inquired whether or not the applicant could be asked to pay for the cost of painting signs designating the parking spaces across from her studio.

Chair Pearce stated that as she remembered the case of the trellis, parking spaces were designated because businesses were having trouble getting parking. Commissioner Narum stated that the trellis was not approved because they believed that parking spaces were already designated, but upon further inspection, it appeared that the spaces were designated with painting to a particular business.

Chair Pearce stated that if this would trigger asking the entire building to designate parking spaces if the thought was that overflow parking would occur, she was not willing to move in that direction.

Commissioner Fox stated that if five students are being taught at the same time and, when the next five students arrive when the first five may still be there, a total of ten spaces would be needed. She added that she did not like the idea of street parking and children exiting the vehicles from the street.

Commissioner Narum stated that it would be difficult to restrict on-street parking for some when people park along the street for Quarry Lane School. Commissioner Fox noted that the difference is that Quarry Lane School is a detached building and has its own parking lot and is not a building with shared suites and parking.

Commissioner O'Connor noted that the trellis application was the opposite type of parking issue in that one tenant wanted a specific parking space for his business. He stated that in this case, the issue is the overflow into other areas.

Commissioner Narum disagreed and stated that what was found was that the other businesses in the building had painted their own designated parking spaces, and the owner was simply trying to call out his spaces via the trellis. She stated that she would rather the Commission condition the applicant to paint her spaces in front of the studio, which would reinforce parents on where they should and should not park.

Commissioner O'Connor inquired if staff reviewed whether or not there is adequate parking requirements for the building. Ms. Decker replied that there was adequate parking when staff originally analyzed this project. She added that in this particular expansion analysis, staff also found that four spaces would be adequate because there was on-street parking. She noted that although the on-street parking cannot be counted toward the use, staff believed, after conducting site visits, that it was reasonable to think it was likely a patron of the music studio would park there.

Commissioner O'Connor noted that five instructors would utilize five parking spaces regardless of whether they are on the street or in the parking lot.

Commissioner Narum inquired if the instructors could be required to park on the street. Ms. Decker clarified that the applicant is requesting to increase the number of instructors from one to five on the site, so, there may not always be five instructors on-site. She noted that the opportunity at hand is for the applicant to have piano and other music instruction with added instructors, and although staff does not encourage or support businesses that begin expansion of their uses, there have not been any complaints regarding parking in this case.

Commissioner Olson stated that he has a problem relative to children in the parking lot. He inquired if the project could be conditioned such that children must stay inside the facility until they are picked up. Commissioner Fox stated this could be addressed by the requirement that children be signed into and out of the facility.

Commissioner Olson asked Ms. Radayeva if her suite was on lease. Ms. Radayeva replied that she owned the building. Commissioner Olson stated that because the Commission's denial of this use would require the applicant to find another location and pay rent, he was inclined to agree with Commissioner Fox regarding the signing in and out to prevent the children from waiting in the parking lot of an industrial area.

Ms. Decker clarified that the use permit is to modify the original permit to allow an expansion of instructors from one to five and that if the Commission denied the modification, the use would still be at the location with one instructor and student at a time.

Commissioner Fox said she did not disagree with the original use permit due to the fact that there would only be one instructor and one student at a time; however, she cannot support the expansion because of the unsafe situation and on-street parking.

THE PUBLIC HEARING WAS RE-OPENED.

Warren Darmsted, representing the applicant, stated that they have not had any problems except with the owner at 1236 Quarry Lane who has asked some people to move their cars, which the patrons have done. He stated that the problem is not with parking but that Mr. Studzinski does not want people to park on his property, even if he has no renters and all his spaces are usually open. He noted that staff visited the site and did not find a problem.

Commissioner Olson stated that he believed there was a problem relative to children and their safety.

Mr. Darmsted stated that this is the same situation with the other businesses in the business park. He added that there is adequate parking and that staff has confirmed this.

Commissioner O'Connor asked Mr. Darmsted if there was adequate parking on his property, and Mr. Darmsted replied that there was no parking problem.

Commissioner Narum stated that the applicant is asking for a use permit that would allow for five instructors at the same time, which means that there may be five students at the site as well. Mr. Darmsted said they were asking to have a total of five instructors who would come and go, some of whom would teach only one or two days a week, unlike in a school where they teach all day during the week. He confirmed, however, that there is a possibility that there could be five instructors at any one time.

Commissioner Narum reiterated that the applicant is requesting a use permit for five instructors at the same time, which would potentially mean that five students could be on-site at the same time, thereby using a potential of ten parking spaces. She noted that there are four spaces available in front of the facility and that this is a parking issue. She agreed that children running around in the parking lot is a problem and that one solution would be to require the instructors to park on the street so the spaces in front of the business would be available to the students. She added that the children could also be required to be signed in and out and that they stay inside the building until they are picked up.

Mr. Darmsted stated that the teachers have already been asked to park on the street and that two of them take public transit and do not drive. He added that parents have signed contracts and have been told that children may not be left there unattended. He reiterated that he believed there was no parking problem.

THE PUBLIC HEARING WAS CLOSED.

**Commissioner Fox moved to deny Case PCUP-237.
Commissioner Olson seconded the motion.**

Chair Pearce indicated that she would not support the motion, given the strict conditions to be placed on the project, the neighboring property owner's recourse, the fact there have been no complaints, and staff's impression of the parking situation and documented spaces. She stated that she was inclined to provide the applicant a second chance to show that the business can run well with expansion.

Commissioner O'Connor noted there are many facilities in the Quarry Lane Business Park that have children in a mixed-use building and that he would also not support the motion. He added that he would like to include the condition that children be signed in and out.

Commissioner Narum said she would not support the motion as there were similar uses in the park and that the added conditions would address the concerns.

ROLL CALL VOTE:

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

The motion failed.

Mr. Roush stated that conditions could be added to the use permit, including a condition to require that the parking spaces at 1236 Quarry Lane be signed and paid for by the applicant. He noted that there is already a condition for children to remain in the waiting area, but the sign-in and sign-out condition could be a way to keep the children in the building until their parents arrive.

Commissioner Fox stated that it was her understanding, based on problems with previous applications, that an adjacent property cannot be conditioned to do something. Mr. Roush clarified that the Commission would be obligating the applicant at 1228 Quarry Lane to pay for something at 1236 Quarry Lane, if this were acceptable to the owner of 1236 Quarry Lane.

Commissioner Narum moved to make the required conditional use findings for PCUP-237 as listed in the staff report, and approve the project subject to the conditions listed in Exhibit A of the staff report and in the staff memo dated February 25, 2009, with the addition of the following conditions: (1) The applicant shall require children aged 12 years and under to be signed into and signed out of the facility by a parent, guardian, or adult supervisor; (2) The applicant shall require the instructors to park on the street in order to free up the parking spaces in front of the music studio for students; and (3) The applicant shall be required to paint-mark the parking spaces on the south side of 1236 Quarry Lane, if acceptable to the owner, as designated parking spaces for 1236 Quarry Lane only.

Commissioner Olson seconded the motion.

Commissioner Fox stated that she would not support the motion. She noted that PUD-I and I-zoned areas are for manufacturing and industrial operations, and businesses will not want to locate in the Quarry or Valley Business Park with children's facilities for liability reasons. She added that this limits where light industrial businesses can locate.

Chair Pearce stated that she would support the motion and added that she would not be pleased if the application came back before the Commission because the conditions were violated.

ROLL CALL VOTE:

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

Resolution No. PC-2009-05 approving PCUP-237 was entered and adopted as motioned.

- a. **PMCC-2, Vineyard Villa**
Application for a Vesting Tentative Map converting a 208-unit mobile home park located at 3263 Vineyard Avenue into residential condominium units. Zoning for the property is C-F (Freeway Interchange Commercial) District.

Mr. Dolan presented the staff report and described the background, scope and key elements of the proposal.

Commissioner Fox referred to the second paragraph of the survey cover letter, dated March 17, 2008, which addresses provisions for loan assistance. She noted that there was no mention made that if the lot is converted, the rent control stabilization agreement would no longer be effective after four years for those residents who are above a certain income level. She inquired whether this was a *bona fide* survey and whether the respondents to the survey could validly choose to say "yes" or "no" based upon what they were told. She further inquired whether the cover letter was leading and how unbiased it was.

Mr. Roush replied that he was not aware of any particular case law or statutory guidance regarding what must be included in a cover letter. He stated that there will always be a certain amount of discretion on the part of the parties who prepare the letter, and one should look at the entire document to determine whether adequate information is available to allow the residents to make a reasonable judgment about whether or not they can answer the question. He added that he believed the survey was adequate; however, certain information could have been added to clarify certain things. He noted that there have been all-park meetings where the owner's representative had provided information to the residents in attendance; information was also mailed to all the residents.

Commissioner Fox stated that it was her perception that it would not be reasonable or common knowledge that when a mobile home park is converted to

condominiums, rent stabilization agreements are voided; State law would take over, and after four years, renters would be under a market-rate rental situation.

Commissioner Fox noted that many survey respondents were undecided, and comments on the survey indicated that some respondents were concerned about letters they had received. She stated that some were concerned because they had no idea about what the purchase price would be. She questioned whether, as a *bona fide* survey, there should have been an “undecided” option.

Mr. Roush replied that in fairness to the applicant, the applicant’s representative did share the survey with City staff as well as a resident committee who worked on the rent stabilization agreement and there was give-and-take with respect to what was contained in the survey as well as its phrasing. He stated that the group concluded that it was fine to include the “undecided” question and that the owner did not mandate that it be included.

Commissioner Fox stated that only approximately 40 out of 208 units, or 20 percent, were in favor of the conversion. She inquired if more than 50 percent, or 105 “yes” votes for 208 units, would be required for a majority.

Mr. Roush replied that much like in an election, there may be 200 registered voters, but if only 100 vote, it would not require 101 votes for the measure to pass. He noted that the difficulty is that under case law, the applicants contend that they met the requirements of State law by simply conducting the survey.

Commissioner Fox inquired what a “*bona fide*” survey meant.

Mr. Roush replied that the legislative history of the language is not particularly illuminating and that it would have to fall back on an appellate court’s decision before the amendment of State law, which decision talks about whether the intent of the application is to sell the units off as a residential conversion as opposed to selling off one or two lots, and then raising the prices on the lots so no one else can buy it, thereby removing the rent control provisions. He noted that in this case, the courts have said that if that happens, it would not be a *bona fide* conversion but a “sham” conversion, and the courts could step in and set it aside.

Commissioner Fox inquired what the definition of a “sham” conversion was.

Mr. Roush replied that it would be where the conversion is allowed to go through, the owner sells one or two lots to get rid of the rent stabilization ordinance, and then prices the lots so high that no one can reasonably purchase them, thereby eliminating rent control.

Commissioner Fox inquired if rent stabilization would be removed if one of the mobile home spaces is sold under the current proposal.

Mr. Roush replied that the first sale would trigger the four-year phasing-in of market rates for those who do not qualify as lower income households. He added that the applicant has agreed to not sell any lots for at least ten years.

Commissioner Fox noted that the current zoning of the property is CF (Commercial Freeway) and that she is not aware of any residential project in a CF zoning district. She inquired why the property would not need to be rezoned from commercial freeway to a residential zoning district.

Mr. Roush replied that the issue is the amount of discretion the Commission has with respect to denying the application because of perceived inconsistencies with the zoning ordinance. The applicants will contend, based on existing case law, that the limit of the Commission's or the Council's discretion is with respect to complying with Section 66427.5 which is limited in nature.

Commissioner O'Connor inquired who determines what the market rent is for the non-low-income households who choose not to purchase a condominium.

Mr. Roush replied that under current State law, the park owner makes that determination and that there is no guidance on how this is to be done. He noted that the argument would be that if the price were set so high or over the market rate, the City or residents would be able to go into court to show this is unfair. He noted, however, that it was his understanding that when other owners have converted following this process, they have done it through an appraisal or market survey so there is some basis for the sales price.

With respect to the ten-year waiting period and if a condominium conversion is so desirable, Commissioner O'Connor inquired why the sale would not be done immediately or within a shorter period of time after the Department of Real Estate (DRE) report is received.

Mr. Dolan replied that staff did not intend to describe it as desirable but is explaining what State law indicates.

Mr. Roush stated that the owner felt that, rather than placing the existing residents into a situation in 2009 where the condominium plan would be recorded and lots would begin to be sold and the residents would need to make the decision sooner than later, it was more equitable to existing residents to move that decision out ten years. He noted that there is no requirement that the owner start selling the units in ten years, and he could wait a longer period of time.

Commissioner O'Connor inquired if there was any provision in State law regarding mobile home conversions that required a minimum of half the units be sold, as there was in a straight condominium project.

Mr. Roush replied that he was not aware if this similar provision applies in this case wherein a certain number of sales must be in escrow before the first sale can be closed.

Commissioner O'Connor inquired if, after the first right of refusal 90-day period, the units of those residents who choose not to purchase their condominium could be offered to anyone else interested in purchasing the right to be the new landlord of that unit.

Mr. Roush said no. He added that it was his understanding that the applicant cannot sell the lot out from underneath the person. He deferred the question to the applicant for further explanation.

Commissioner Fox requested clarification that although the staff report indicates that the units would become resident-owned in ten years, the owner of the mobile home park is under no obligation to do that and may extend the ten-year period.

Mr. Roush replied that was correct. He added that the restriction, as written now, is that the owner will not sell the units for a minimum of ten years.

Commissioner Fox inquired how the ten-year and four-year period work with respect to rent stabilization.

Mr. Roush explained that assuming the final map records in 2009, none of the conversion provisions will apply between 2009 and 2019 and that the conversion will not occur until after the first lot is sold. He continued that assuming the first lot is sold on July 1, 2019, this would trigger the averaging of the rents in 2015, 2016, 2017 and 2018 that would apply for 2019 for those lower income residents. He stated that because the rent stabilization agreement runs from 2007 to 2017, the agreement will continue to be in place, and, during that time, rents may increase between two percent to five percent each year, depending on the Consumer Price Index (CPI).

Commissioner Fox inquired what will happen if the agreement was extended beyond 2017 and whether there will be further negotiations with the park owner during 2017.

Mr. Roush replied that if an agreement is not reached, the rent stabilization ordinance would take effect in the absence of an agreement. He clarified that if a tenant moves out in 2010 and a new tenant comes in, the new tenant would pay the rent that the rent stabilization agreement would provide for any new resident.

In response to Commissioner Olson's inquiry if the rent stabilization agreement would cease to take effect at conversion, Mr. Roush replied that the terms of the rent stabilization agreement would be superseded by State law at the time of conversion unless the owner were to agree otherwise. He noted that, notwithstanding State law, the owner could indicate that he will continue to abide by the agreement for so

many years, or he could say otherwise and trigger the provisions of Section 66427.5 at the time of the conversion date, which would be the date of the first sale of the unit. He added that at that point, the City's ordinance ceases to be effective.

Commissioner Olson asked if staff tried to determine why so many residents did not respond to the survey.

Mr. Roush replied that staff did not follow up with those who did not respond to the survey. He added that staff felt 120 responses out of 208 residents was not a bad return.

Commissioner Narum inquired if the documents provide language that, somewhere along the line, the park could not be converted from senior housing to a regular mobile home.

Mr. Roush replied that the rent stabilization agreement includes a provision that identifies it as a senior park; therefore, contractually, it could not be converted to a family park. He noted that when the lots within the park go up for sale, a similar provision restricting the park to senior residents will be included in the CC&R's.

Commissioner Narum inquired what would happen in 2017 when the rent stabilization agreement expires and is not renewed and if it is 100 percent certain that it will be still be for seniors once conversion occurs.

Mr. Roush replied that if an agreement cannot be reached, an ordinance would be put in place that the park be age-restricted, which he felt would be reasonably defensible; however, there are also Federal housing laws that need to be considered. He noted that the owner has indicated that his intent is to keep the park age-restricted, which would be part of the conversion process, although the conversion has not been expressly conditioned as such.

Commissioner Narum inquired if it were possible to condition the park to remain age-restricted.

Mr. Roush replied that he did not believe the owner would have any objection to that.

Commissioner Narum noted that the tenant impact report and the minutes from January 8, 2009 quoted Ms. Forbath in several places as stating that the rent structure will change. Commissioner Narum added that she did not see a discussion in the impact report of what that means and inquired if it needs to be included.

Mr. Roush replied that he believed Ms. Forbath was referring to the fact that residents would no longer be operating under the rent stabilization agreement but under State law instead, which has a different formula for how rents are calculated. He noted that this is addressed in the tenant impact report in Section 4, page 3

under rental rate increases, and on page 4 on non-lower income residents and lower-income residents, describing how rents are calculated.

Chair Pearce stated that under Environmental Assessment of the staff report, it states that conversion of a rental mobile home park to a residential subdivision, cooperative, or condominium for mobile homes is exempt from CEQA. She inquired if this was still applicable if the property were not zoned residential.

Mr. Dolan replied that from a planner's perspective, CEQA is intended to evaluate the impacts of physical changes on the environment. He noted that because the conversion will not change the environment, that there will be nothing to evaluate on the environment. He added that the limitation that the legislature has imposed on local agencies would suggest that CEQA should not apply in these situations.

THE PUBLIC HEARING WAS OPENED.

Richard Close, Gilchrist & Rutter, stated that the application is governed by State law, enacted in the 1980's at the request of residents. He explained that residents would like to own land in the mobile home park, but the legislature realized it was difficult for them to get financing to purchase the entire park. He continued that In the 1980's, the legislature set up a system to encourage park owners to subdivide their parks and make them available to residents for purchase with *pro rata* ownership interest in the common areas. He added that the legislature also stated that those residents who do not want to buy can live in the park for as long as they wish.

Mr. Close stated that the legislature also set up rules regarding rental rates in the park in that rents cannot go above the CPI for low-income residents. He continued that for non-low-income residents, State law provides that rent would go to market rate over a four-year period. He noted that low income for a family of two is \$53,000 annually, and for a family of four, it would be \$56,250.

Mr. Close stated that the purpose of the conversion is to create affordable for-purchase housing. He noted that the rules are very specific and added that it could be frustrating because this is a subdivision but not a regular one. He indicated that to encourage park owners to convert, the legislature indicated that as long as the rules that have been set forth are complied with, the City must approve the conversion.

With respect to whether or not a resident who continues to rent would have to pay homeowner association (HOA) dues, Mr. Close said the answer is no. He explained that if a resident continued to stay in the park as a renter, he or she would pay rent to the owner, who would pay the dues to the HOA, much like in a condominium association. He added that over time, tenants will eventually control the operation of the park.

Mr. Close indicated that there would be no change whatsoever in the park for at least ten years or longer. He stated that he was not sure why a ten-year period was suggested but believes it was something the owner preferred.

Suzie Forbath, Gilchrist & Rutter, stated that the State recognizes that affordable housing is different for people of different incomes, and this is the reason why the increase in rent is spread gradually over a four-year period. She noted that the State is trying to create affordable for-purchase housing, which is a scarce commodity. She added that part of the reason why it is more of a form of affordable housing than what they have today is because while rents may be limited; there is no limit on the cost of the homes they must buy to rent the space.

Ms. Forbath indicated that mobile homes do not qualify for real estate loans as they are deemed personal property, but upon conversion, the current residents who decide they want to purchase can take their old loans and roll them into a real estate loan with the property and qualify for lower interest rates. She noted that this would reduce the cost of what they were paying on their loans and would become affordable for them.

Ms. Forbath stated that the State also wanted to encourage lower-income residents to be able to purchase their lots, and recognizing it may be difficult for them to qualify for loans, a State-funded finance program was created for lower-income residents in converted parks. She added that lower-income residents can be loaned money up to 95 percent of the purchase price at three percent interest over 30 years, and payments will be tailored based upon the residents' income to ensure affordability.

Ms. Forbath stated that there have been meetings in the park with large attendance, that they tried to provide as much information as possible to prepare the residents for the change, and that they were careful to mail information to everyone in the park. She noted that part of people's fear is the unknown, and the unknown in this case is change. She added that this change provides the option for some to own where none currently exists and for others to continue rent, although their rent may not be protected in the same manner as the present. She indicated that there would be no change of use upon conversion and that the park will always remain a mobile home park.

Ms. Forbath stated that everything within the boundaries of a mobile home park is controlled by the State Housing and Community Development Department and that this will stay in place after conversion. She added that the Mobile Home Residency law will stay in place, as well and that additional protections under the Davis Sterling Act will be provided once a homeowners association is set up.

Commissioner O'Connor referred to affordability and inquired what the price of the conversion would be today.

Ms. Forbath replied that an appraisal has not been conducted. She noted that appraisals of this type are different from a regular single-family home in that many factors must be determined, and would cost approximately \$30,000. She stated that in other parks across the State, prices of lots depend upon the location of the park and that she believed it would be equal to or greater than the amount the owner could sell the park today to another party. She added that it is to the owner's advantage to sell lots gradually over time and that another reason park owners want to convert is because they would prefer to see the park as resident-owned rather than owned by a Real Estate Investment Trust (REIT) or other entity.

Commissioner Fox presented a scenario where an 85-year-old is making monthly payments on a \$50,000 mobile home, and this resident is given an option to purchase the lot for \$200,000. She requested Ms. Forbath to describe the financing of such a loan where the senior resident would suddenly have to come up with funds to refinance the home and purchase the lot.

Ms. Forbath stated that assuming the 85-year-old person qualifies as a lower-income resident and applies for the loan from the State, the State will look at the resident's income and ensure that the total housing costs, including mortgage, property tax, HOA dues, and utilities, do not exceed 30 percent of his/her income. She noted that if \$500 is the remainder that would apply toward a mortgage, the State would defer the rest of the principal and interest short of \$500 a month.

Ms. Forbath continued that if a resident needed to go into assisted living, the property could be sold to pay off the loan, and the property would now include the home and the lot. She added that if the person passed away in five years, the piece of land would be an asset that would go to the heirs, who would have the choice to keep it or sell it.

Commissioner Fox inquired what percentage of residents would be able to qualify for a \$200,000 loan.

Ms. Forbath replied that as long as the residents are low income, they would qualify for the State program; additionally, the park owner would assist those who do not qualify in obtaining a regular home loan by working with lenders and looking for available financing that is much better than what is in place today.

Commissioner O'Connor inquired whether or not deferring principal and interest would make the loan actually higher than the value of the lot and home combined.

Ms. Forbath replied that this does not typically occur as land values go up and there would be equity. She noted that the home or "coach" would depreciate, but the price of real estate increases.

Commissioner O'Connor inquired if the State would extend a loan for both the mobile home and the land if an 85-year-old resident is making payments on the mobile home and purchases the land for \$200,000.

Ms. Forbath replied that the loan would only be on the land but that the existing mobile home loan would be considered in the assessment.

Commissioner Fox noted that the survey was done for ten years into the future and inquired if this would be adequate or *bona fide*, considering that the price ten years from now would be unknown and seniors would have no idea what the values would be in the future.

Ms. Forbath replied that there are several reasons for someone to support the conversion without knowing whether or not they want to buy, including the recognition that it provides options in the future. She noted that one would not necessarily have enough information until the DRE process is completed, and the applicants cannot go to that process until they are approved by the City. She added that the survey is not asking whether or not they want to buy but whether they support the idea of having an option in the future.

Mr. Close stated that he raised similar points when the law was being proposed, but the legislature decided that the survey must be done in the beginning of the process. He indicated that he thinks the legislature wanted the park owner to get a feeling as to whether or not residents might be interested in purchasing if they were able to do it and if financing was available. He indicated that he agreed with some comments that the survey should have been done at the end of the process; however, they needed to follow State law.

Commissioner Narum requested an explanation of the statement in the minutes of the January 2009 mobile home park meeting quoting Ms. Forbath as saying that the "rent structure will likely change."

Ms. Forbath replied that currently the rent protections in place under the rent stabilization agreement apply to everybody across the board, but that upon conversion, the formula and structure would change, with a different set of rent protections for lower-income and non-lower-income residents. She explained that the agreement currently allows pass-throughs for capital improvements, inspections, and fees, and rent can be increased, whereas under the State law, there would be no more pass-throughs and would be strictly limited to CPI.

Mr. Roush stated that this is correct and added that staff negotiated out the capital improvement pass-through for this particular park and that the owner has agreed to pay for all capital improvements.

Mr. Close inquired if, assuming there is no rent stabilization agreement in 2019; pass-throughs would be allowed under rent stabilization rules of the City.

Mr. Roush replied that the owner has entered into a separate agreement wherein the owner is picking up all capital improvements in the future, which was negotiated as part of a rent increase in 2008.

Ms. Forbath stated that renters would not be paying HOA dues and that the owner would pay for all spaces that did not sell. She added that even if the dues increase, he could not pass on that increase to residents.

Commissioner Narum inquired whether the park owner had agreed to rent stabilization until the conversion took place.

Mr. Close said no; he has agreed to it until 2017.

Commissioner Narum noted that there would then potentially be a three-year gap where he would come under the ordinance.

Mr. Roush stated that the City has a history of negotiating agreements with the owner; however, if staff is unable to do that in 2017, the ordinance would apply until the conversion took place.

Commissioner Narum asked Mr. Close if the owner was agreeable to a condition to ensure the park remains a senior-restricted park.

Mr. Close replied that he has not discussed this with the owner. He indicated that under Federal law, the park cannot be limited to seniors, although there are exemptions for properties like this. He added that the exemption could be forfeited if the owner discriminates; therefore, it would be difficult to confirm that this would never change. He noted that the HOA would take control once the conversion occurs.

Commissioner Narum stated that she wants to avoid a situation in which, five years from now, the owner decides he wants to sell to someone else who wants to have a family park.

Mr. Roush indicated that contractually, the owner has agreed to keep the park age-restricted through the end of 2017 and that staff would look to the CC&R's to keep that restriction in place.

Commissioner Narum noted that there is a gap and that it could be decided sometime between now and 2017 that the owner wants to sell. She added that as soon as the rent stabilization agreement expires, he could sell the park, and the new owner person would not be bound by the age-restriction clause.

Mr. Roush stated that staff would attempt to keep the age-restriction by including in the ordinance and through the CC&R's. He added, however, that while this would

be the City's goal, he could offer no guarantees as there are Federal laws that must be taken into account.

Ms. Forbath reiterated that the park owner has demonstrated his cooperation with the City and residents.

Gloria Robertson, a 20-year resident of the park, stated that she thinks the owner has proposed a fair solution in wanting to convert the park to provide an opportunity for residents to buy the land or continue renting. She added that the ten-year period benefits everybody and that she supported the proposal.

Aimee Ann Vickers, a 10-year resident, stated that the park is 37 years old with a lot of sewer, electrical, and other problems. She voiced concern that dues will be significant and would increase over time.

Art Moniz stated that residents would buy air space below the unit and not the land and that those residents not of low-income status would not be able to get loans. He noted that many units are very old in the park and brand new manufactured units, which sell for \$100,000 to \$200,000, would be unaffordable for seniors. He voiced multiple hidden costs which would be passed onto residents as a result of incidents that have occurred, including sewer system backups, transformer circuit breakdowns, electrical utility problems, and park liner leakage problems. He then presented a disclosure regarding the park's conditions as of January 20, 2009 wherein no defects had been marked, which was of great concern.

Jack Ferris stated that he bought and replaces many mobile homes within the park over the last ten years and expressed his support for the proposal. He indicated that space rents have gone up, and the conversion would provide residents the opportunity to buy their space and control their destiny, which they cannot do today. He added that manufactured homes are of high quality but that the only way value is to be seen is to purchase the land underneath their units which will appreciate over time. He further discussed costs at varying loan amounts, which he felt was less expensive than space rents today, and stated that he supported the State's loan program.

Pam O'Connell stated that homeowner dues must be taken into account when considering rent and mortgage, and this is not affordable for many people. She added that she felt the State would not be in a position to provide loans due to their position and that this cannot be counted on in ten years. She stated that she believed the owner representatives used coercive tactics and that she did not trust the proposal. She indicated that she has not been able to sell her mother's unit and felt that moving the land into ownership was not a good thing for the park or the people living there.

Janet Cristiano stated that her mother lives in the mobile home park. She indicated that she was excited about the opportunity to purchase the land as affordable

housing is difficult to find. She echoed Mr. Ferris' comments and confirmed that reserves would need to be put in by the park owner for repairs, which the homeowners would control. She noted that the low-income level for couples is \$53,000 and inquired what the rate was for singles.

Mr. Dolan replied that it is \$46,350.

Mr. Close referred to comments regarding buying air and stated that the residents will own both the land and their pro-rata share of all common areas. He noted that the State recognizes that there may be some residents who would not be able to afford purchasing their unit, and these residents can remain in the park for as long as they desire. He reiterated that low-income residents are fully protected as they will not be charged more than the CPI increase.

Ms. Forbath stated that part of the application to the DRE requires documentation that includes a reserve study to be done by a licensed inspector who will physically inspect every single aspect of the park and look at the current owner's operational costs to determine the history of repair work. She noted that the reserve study will indicate what the useful life of each park component is, and the HOA would start off with a substantial balance in its account for reserves. She added that the DRE will also look at future operational costs to determine what the dues should be. Regarding ownership of the land, she stated that residents will own approximately two feet deep under their unit so that no individual resident has to own the utility lines which are located below the units; the HOA would own the rest and would be responsible for any repairs.

Commissioner O'Connor inquired if the HOA would be fully funded at the time of the conversion.

Ms. Forbath replied that it would be funded for the useful life of the components that has been used up at that time, as determined by the reserve study.

Commissioner Fox inquired what the approximate homeowner dues per month would be.

Ms. Forbath replied that she did not know but that other parks' HOA fees range from \$120 to \$220 per month.

Commissioner Fox noted that this would be an additional on-going amount.

Ms. Forbath agreed and added that those with State loans would have the dues accounted for in their housing cost estimate and that any renter would not be responsible for paying HOA dues.

Commissioner O'Connor inquired what the percentage of low-income versus non-low income residents in the park was.

Ms. Forbath replied that she was not sure for this park but that almost uniformly in other parks, low-income residents fall between 80 percent to 85 percent of the residents, with a higher percentage for low-income in age-restricted parks.

Mr. Close noted that low income was based on income and not assets. Ms. Forbath noted that low-income levels quoted earlier were 2008 figures; no 2009 figures have come out to date.

Commissioner Fox noted that there was a comment about an altruistic motive for allowing homeowners the option to buy their units, but another speaker stated that it was more coercive. She inquired if representatives had stated that residents who supported the conversion would get a 15-percent discount in the future.

Ms. Forbath stated that she did not believe this was coercive or altruistic. She noted that State law states that if parks are converted, every resident will have the opportunity to purchase or remain renting. She indicated that there was an early offer made by Mr. Guggenheim to every resident in the park that if they were supportive of the proposal, they would be offered additional benefits. She noted that many people signed up for this and, in exchange, were assured a 15-percent discount on the purchase price of the land and owner-financing for buyers and better rent protection for renters.

In response to Commissioner Fox's inquiry if those who opposed the conversion would get the same benefits, Ms. Forbath replied that no resident would be deprived of anything they are entitled to under the law. She noted that the offer was made to all the park residents and that the benefit should be viewed as an incentive similarly offered by developers for purchases of new tract homes. She added that the residents would receive the benefits at the time of conversion.

Commissioner Fox referred to Mr. Roush's letter regarding the owners filing a lawsuit of \$25 million if the City continues to delay the hearing or otherwise interfere with the conversion. She inquired if this was indicative of what is considered the appraised value of the park.

Mr. Close replied that this number was derived from experts and used throughout the State. He added that some cities have not followed State law, and the owners had to exercise their rights to sue for damages resulting from delay. He noted that six months ago, the City of Palm Springs wrote a check on the eve of the trial to the owner of a park for \$937,000 due to delay in a conversion.

Commissioner Fox stated that in the letter, the City Attorney has asked on numerous occasions to provide a more concrete example of what the purchase price of the lots would be.

Mr. Close replied that it would be the fair market value of the property at the time of the conversion, based upon an appraisal.

Commissioner Fox inquired why an appraisal was not done prior to sending out the surveys to provide an average cost for the air space.

Mr. Close replied that this is not the process prescribed by State law. He noted that they are also following the El Dorado case which specifically states that pricing is not within the jurisdiction of the City. He added that it is even more relevant in this situation because nothing will happen for at least ten years.

Ms. Forbath noted that it would not be practical to advertise a price of a home today to be sold ten years later.

Commissioner Fox stated that she felt some estimate would provide the residents with the option to consider something in the future.

Ms. Forbath noted, as an example, that the selling price in Palm Springs is \$140,000, and in Morro Bay with ocean views is \$220,000. She reiterated that not all residents will want to buy and that those who want to continue to rent will be able to do so.

Commissioner Olson referred to the \$25 million lawsuit and inquired if the Planning Commission's denial of the map would be considered a delay and would result in a lawsuit against the City.

Mr. Close replied that they would appeal the denial to the City Council.

Commissioner Olson noted that Section 66427.5 contemplates that the legislative body or advisory agency can either approve, conditionally approve, or disapprove the map, which is the law. He inquired what basis would be used to sue the City.

Mr. Close replied that they have complied with all provisions of State law, and Ms. Forbath added that the Commission can deny it only if the owners had not complied with the requirements.

Commissioner Olson stated that he thinks it does not take much to comply with the law. He questioned whether the entire process was a sham.

Mr. Close stated that they are expected to comply with State law. He added that many people feel that State law is not fair and that many cities believe they have been given limited discretion. He noted that a bill was passed over a year ago that would have changed it, but it was vetoed by the Governor. Mr. Close stated that he felt it was a fair question and that that he was here not to defend what the legislature did but to follow the law.

Ms. Forbath stated her opinion that the State wants to keep uniformity throughout the State. She noted that if every city were to decide its own rules on whether or not a park could convert, some park residents would have the opportunity to purchase and others would not.

Chair Pearce called for a break at 9:55 p.m. The Commission then reconvened the regular meeting at 10:06 p.m.

Given the lateness of the hour, Chair Pearce asked the applicants for Item 6.b., PDR-804/PCUP-233, Hana Japan, if they were amenable to continuing their item to March 11, 2009. The applicants agreed to the continuation.

Commissioner Pearce indicated that the March 11, 2009 meeting, which was canceled at an earlier meeting, will be held and that Item 6.b. on tonight's agenda would be heard at that time.

THE PUBLIC HEARING WAS CLOSED.

Commissioner Fox stated that the subdivision map showed that some of the current units are different than the actual proposed subdivision. She referred to Lot 192 and noted that the dividing line goes to the actual corner of a unit and that there is no setback.

Mr. Dolan stated that there is narrow discretion by the Commission under State law relating to setbacks, and this served as an example.

Mr. Roush explained that prior to the time the condominium plan is recorded, the applicant would ensure that the physical structures on the property would be within the proposed lot lines so they do not extend over the lines. He noted that it is possible the units could touch the lot line, but the normal setback provisions of a typical subdivision as well as other requirements do not come into play.

Commissioner Fox clarified the location of the pond on the plan. She brought up the nursing home at 300 Neal Street as an example and stated that if it came to the Commission with a request to do something different than what is in effect today, it was her understanding that this would trigger the need for retrofit work in order to meet Americans with Disability Act (ADA) standards. She inquired who would be responsible for retrofitting all public facilities in the park to be ADA-compliant if it is converted to ownership.

Mr. Roush replied that it is possible that certain retrofitting undertaken by the applicant might trigger the ADA requirements of the State Department of Housing and Community Development (HCD), but he did not believe that the mere conversion would cause HCD to mandate an ADA retrofit. He noted that assuming HCD did require it or if the DRE indicated this would need to occur, the owner would be responsible for making those necessary retrofits.

Commissioner Fox stated that since the park was built in the early 1970's, there may be some deferred maintenance issues on the infrastructure underneath the park, such as sewer system improvements. She noted that if the current park owner is aware of various repair issues and one of the issues is that there may need to be significant monetary investments to fix a number of problems, it would be difficult to say that this was a *bona fide* survey as basic things which could affect the future were left out of the survey. She added that it would seem it would be difficult to say whether or not there is support for the project and that different results might have been received if more information were provided. She voiced concern that 40 of 208 is 20 percent versus a 50-percent majority. She indicated that based on this and that fact that residents would lose certain incentives such as the 15-percent discount if they voiced opposition, she had significant issues in making a determination that there was a *bona fide* survey that indicated resident support.

Chair Pearce stated that she was trying to understand the legislative history and ran across a League of California Cities Amicus Brief for the City of Goleta case dated August 2008. She noted that they talk about a section of the Subdivision Map Act and how the interpretation being given by the applicant is not supported through statutory context, through legislative history, and also how the Palm Springs' decision is not necessarily relevant to these types of issues. She continued that that decision addressed three sections of the Map Act with respect to mobile homes: Section 66427.4, which is the least restrictive and provides free rein in determining conversions of a mobile home park to a new use; Section 66427.5 which was discussed tonight; and Section 66428.1. She noted that under Section 66428.1, if 2/3 of the residents sign a petition that they support the purchase, the agency does not have an ability to regulate unless certain exceptions are met. She indicated that she was trying to understand how a Section of the Map Act that states if 2/3 of the residents support the petition, then the reins are tightened as to what the local agency can do, but under Section 66427.5, even if no one supports the petition, there is little ability for the City to regulate it. She asked Mr. Roush to provide clarification.

Mr. Roush stated that there is certainly a difference of opinion held by city attorneys throughout the State concerning what the proper interpretation is for Section 66427.4 and the interplay between that Section and Sections 66427.5 and 66428.1. He noted that the Palm Springs' decision indicates that Section 66427.4 did not apply because it was not considered a residential conversion, and it does not talk about Section 66428.1. He indicated that he thinks if an argument were to be made that this conversion should not go through, the Commission would look to Section 66428.1 where 2/3 support is needed in order to eliminate the ability of the city to say no. Cities have made the argument at the trial court level unsuccessfully, but in the absence of an Appellate Court's decision, if the City takes the position that Sections 66427.4 or 66428.1 apply, the City will likely be joining in the litigation stream.

Mr. Roush stated that he could not advise, based upon the current state of the law, that this is the safest course of conduct. He noted that in his conversations with attorneys who represent cities exclusively in mobile home law, there are arguments to be made with respect to the applicability of Section 66427.5, but to get there it's going to take an adverse decision at a City Council level, taking it to a trial court level, and then getting it to a Court of Appeal. He stated that this is a route the City may or may not be interested in following and that his role is to provide the best guidance in terms of what the current law is, recognizing that the way new law is made is that cities challenge the status quo.

Chair Pearce referred to the Palm Springs decision and inquired if this primarily related to the economic implications of the residents who chose not to buy. She stated that she thought any broader discussion by the court was mostly because they were only asked to discuss a very narrow question and that there seems to be a lot of reliance by the applicants on this case that is fairly narrow.

Mr. Roush agreed.

Chair Pearce stated that she was aware of the murkiness around Section 66427.5 and the legislative history surrounding the purpose of the survey.

Mr. Roush stated that there is legislative history that supports both the applicant's point of view and the point of view of some cities that feel it only should apply in a broader context. He added that the applicant's side of it has had better success at the trial court level than have cities at this point.

Commissioner Fox stated that she has issues as to whether the survey was *bona fide* and whether there was support. She added that the law states the applicant should obtain a survey of support of residents, and she did not consider 20 percent of 208 units to be a survey of support. She noted that only one in five residents or less actually supports the conversion, and in terms of the survey that was conducted, she would not consider the survey valid if they are being asked now to respond on something that will occur in the future.

Commissioner Fox continued that the other issue is that some sections of the State law in the Subdivision Map Act state that there are some specifications for non-purchasing residents regarding what types of protections they have for rent in the future, but it does not specify that State law protections only concern a portion of the current residents. She indicated that she had questions regarding whether it was a *bona fide* survey of support, issues with the findings required under the Subdivision Map Act itself going over structures, and issues with the current affordability of the units in the park. She noted that the City's General Plan includes goals regarding affordability of units, and she does not want to lose affordable units.

Commissioner O'Connor stated that he personally thought this was a good opportunity for the residents, assuming that 85 percent or higher would be included

in the low-income category. He noted, however, that his problem is that Section 66427.5 is unclear and not definitive with respect to what the requirements are concerning levels of support. He indicated that he has to assume that those who did not vote are not in favor, and that would mean less than 20 percent in support, which was way too low. He added that since the statute is not clear about the required level of support, he looks at it as being nowhere near the level of support he would be comfortable with and, therefore, could not support the conversion.

Commissioner Olson stated that he had made his views clear earlier, and while he cannot support the conversion, his reading of Section 66427.5 tells him the applicant has met the conditions. He noted that Section 66427.5 states that the scope of the hearing shall be limited to the issue of compliance with this section. He stated that there are four points, all of which the applicants have done, and the Commission can only debate the degree to which they have been done. He added that based on this, he would have to conclude that the map should be approved, but he indicated that he did not like it.

Commissioner Narum agreed with Commissioner Olson and stated that in reading Section 66427.5 and what the Commission is supposed to be deciding, she thinks the applicant has met them; however, she indicated that she does not feel good about it and the thing that bothers her is the fact that there was no *pro forma* done about the economics for the residents. She added that she understands not wanting to spend \$30,000 for an appraisal, but it is hard to believe that they could not have done a *pro forma* and be reasonably accurate as far as what the costs would be to low-income and non-low-income residents. She noted that she has struggled with many different ideas to identify deficiencies, and the only thing she would try to do is craft the approval to ensure that this would be an age-restricted park. She acknowledged that the intent of the owner is to hold the park for ten years and then convert it, but things can happen, and ten years is a long time.

Commissioner Olson stated that part of the problem is fear of the unknown. He indicated that it might help to ask the applicants to show the residents what their rent would look like today based on the new structure, taking the last five years to the present and applying those last five years to the new structure. He stated that he felt this might reduce some fear on the part of the residents; however, he did not see the Commission conditioning the approval on that basis. He agreed with Commissioner Narum regarding having a condition to restrict the park to seniors.

Mr. Close stated that he had sent a letter to Mr. Roush a few days ago with information on what the rents would be if the State law provisions applied in 2009; however, due to timing constraints, that information had not been provided to the Planning Commission prior to tonight's meeting.

Chair Pearce stated that she cannot support the proposal because she thinks Section 66427.5 is much more limited in scope than has been discussed. She stated that she does not think the intent is to make the Commission's task

ministerial. She noted that Section 66427.5(e) states that “the subdivider will be subject to a hearing before the legislative body of the local agency to consider the subdivider’s compliance with this section.” She noted that if one looks at the legislative history of the matter, the intent was specifically to consider economic displacement that might result from one of these conversions. She added that the uncodified version of legislative intent with regard to the 2002 amendment to the section states that “the survey of support requirement was added because without it, a conversion of a mobile home park to resident ownership could occur without support of the residents and result in economic displacement.” She noted that it appeared that everything they talked about deals with the economics and regulates the means by which a subdivider must avoid the economic displacement of park residents who choose not to purchase a share of the park. She stated that she did not feel it strips the local agency of the authority to exercise discretion under the applicable State laws or the local regulations; nor did she think there was any intent or expectation of the section to remove local agency authority to address other issues or concerns to ensure the subdivision is appropriate under local conditions. She expressed concern about the lack of affordable, senior rental housing and thinks it is an important area and section of the City’s community. She noted that taking that away and making it an ownership situation is potentially a real disservice to these residents and also the town as a whole. She recognized the issue of litigation and certainly, if appealed to the City Council, this is something the Council will take into consideration. She noted, however, that the Commission has been told on numerous occasions that it ought not take economic things under consideration and only consider planning issues, and, therefore, this is what she is attempting to do by looking at the statutory context, legislative history, legislative intent, and other things of this nature.

Commissioner Fox stated that the Subdivision Map Act states that the subdivider shall be subject to a hearing by a legislative body or advisory agency which is authorized by local ordinance to approve, conditionally approve, or disapprove the map; it does not limit it to approval only. She stated that she might think otherwise if the conversion were to proceed this year, but given an open-ended ten-year period, she cannot believe this is an actual *bona fide* survey of support.

Commissioner O’Connor referred to Section 66427.5(d)5, which states: “The results of the survey shall be submitted to the local agency on filing of the Tentative Map, to be considered as part of the Subdivision Map.” He stated that given this, he would need to see more than 20-percent support before he would support the conversion.

**Commissioner Fox moved to deny PMCC-2.
Commissioner O’Connor seconded the motion.**

ROLL CALL VOTE:

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

Resolution No. PC-2009-06 denying PMCC-2 was entered and adopted as motioned.

Commissioner Fox complimented Chair Pearce on her research of the statutes.

- b. **PDR-804/PCUP-233, Tom Kubo/William Wood Architects, Hana Japan**
Application for design review approval to construct an approximately 6,000-square-foot building at 11991 Dublin Canyon Road for Hana Japan Steak House and for a conditional use permit to serve alcoholic beverages after 10:00 p.m. Zoning for the property is C-C and PUD-O (Central Commercial and Planned Unit Development-Office) District. Also consider a Negative Declaration for the project.

This item was continued to the March 11, 2009 meeting.

7. MATTERS INITIATED BY COMMISSION MEMBERS

Political Signs on Lucky's Shopping Center

Commissioner Fox stated that political signs were still present on the lamp posts at the Lucky's Shopping Center on Hopyard Road and West Las Positas Boulevard.

725 Main Street

Chair Pearce noted that the sign in front of 725 Main Street indicating that the building would be completed in 2008 had fallen. She requested that staff remove the sign.

8. MATTERS FOR COMMISSION'S REVIEW/ACTION

a. Future Planning Calendar

No discussion was held or action taken.

b. Actions of the City Council

No discussion was held or action taken.

c. Actions of the Zoning Administrator

Commissioner Narum inquired if the applicant for PUD-99-06-03M on 2547 Jolene Court was the same applicant for an earlier request for a poolhouse/second unit on Jolene Court. She requested staff clarification prior to the expiration of the appeal period.

9. COMMUNICATIONS

No discussion was held or action taken.

10. REFERRALS

No discussion was held or action taken.

11. MATTERS FOR COMMISSION'S INFORMATION

- a. Brief report on conferences, seminars, and meetings attended by Commission Members

Chair Pearce reported that a Bicycle and Pedestrian Advisory Committee (BPAC) meeting was held last week and that she attempted to have another Chair elected, but was unsuccessful; she will serve as Chair for another year. She indicated that a Draft Master Plan is on-line and that a public workshop will be held at the Veterans Building on March 18, 2009 at 6:30 p.m.

Commissioner Fox inquired about an email regarding the near crash on Valley Avenue. Chair Pearce stated that the Committee had discussed the matter. Mr. Roush replied that new signage has been installed to indicate that people are supposed to walk their bikes.

12. ADJOURNMENT

Chair Pearce adjourned the Planning Commission meeting at 10:47 p.m.

Respectfully,

DONNA DECKER
Secretary