



PLANNING COMMISSION MINUTES

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

APPROVED

Wednesday, December 10, 2008

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

CALL TO ORDER

The Planning Commission Special Meeting of October 29, 2008, was called to order at 7:00 p.m. by Chair Blank.

1. ROLL CALL

Staff Members Present: Brian Dolan, Director of Planning and Community Development; Donna Decker, Principal Planner; Larissa Seto, Assistant City Attorney; Jenny Soo, Associate Planner; Robin Giffin, Associate Planner and Maria L. Hoey, Recording Secretary

Commissioners Present: Commissioners Phil Blank, Anne Fox (left at 11:00 p.m.), Kathy Narum, Greg O'Connor (arrived at 7:20 p.m.) and Jennifer Pearce

Commissioners Absent: Commissioners Arne Olson

2. APPROVAL OF MINUTES

a. October 29, 2008

Commissioner Fox noted that because she was absent at this meeting, she would abstain from voting on the Minutes.

Commissioner Narum referred to the paragraph following "The public hearing was closed" on page 10 and inquired if "12" was the correct number for the total number of hours allowed. Ms. Decker replied that was correct.

**Commissioner Pearce moved to approve the Minutes of October 29, 2008.
Commissioner Narum seconded the motion.**

ROLL CALL VOTE:

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

The motion passed, and the Minutes of October 29, 2008 were approved.

b. November 12, 2008

Chair Blank advised that Commissioner O'Connor would be late and that the November 12, 2008 meeting Minutes would be deferred until his arrival.

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

John Pfund, Tri-Valley Martial Arts Academy, extended his thanks to the Commission for addressing his application. He voiced disappointment in the City's processes stating that he found out shortly after that meeting that the Commission's decision was appealed to the City Council. He indicated that he was extremely frustrated at how the City treats someone with a small business and expressed hope that the tutorial school on tonight's agenda would receive the same treatment.

4. REVISIONS AND OMISSIONS TO THE AGENDA

Ms. Decker advised that the Commission may wish to consider a continuation of Item 6.d., PUD-75/PSPA-3, Robert Wentworth due to the large number of people speaking on other matters. Chair Blank suggested taking action if needed once the hearing items were presented.

Commissioner Fox noted that there were a number of children in the audience for Item 6.b., PCUP-224, Little Ivy League School, and requested moving up the item on the agenda. The Commission concurred.

5. CONSENT CALENDAR

a. PCUP-235, Linda Fong, Plato's Closet

Application for a conditional use permit to operate a second-hand store at 4555 Hopyard Road, Suite C-23. Zoning for the property is PUD-I/C-O (Planned Unit Development – Industrial/Commercial-Office) District.

Commissioner Pearce moved to make the required conditional use permit findings as listed in the staff report and to approve Case PCUP-235, subject to the conditions of approval listed in Exhibit B of the staff report. Commissioner Narum seconded the motion.

ROLL CALL VOTE:

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

Resolutions No. PC-2008-59 approving Case PCUP-235 was entered and adopted as motioned.

6. PUBLIC HEARINGS AND OTHER MATTERS

b. PCUP-224, Little Ivy League School

Application for a conditional use permit to operate a tutorial school with a maximum of 90 students located at 5925 West Las Positas Boulevard, Suite 200. Zoning for the property is PUD-I/C-O (Planned Unit Development-Industrial/Commercial) District.

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

Commissioner Fox referred to an e-mail from staff, dated December 10, 2008, with additional attached e-mails included in the packet and that refer to a facility at 4455 Stoneridge Drive. She inquired what the relation of the facility was to the facility under consideration. Ms. Soo replied that Little Ivy League is currently located at 4455 Stoneridge Drive and that the applicant wishes to relocate to 5925 Las Positas Boulevard.

Commissioner Fox referred to the State's letter of exemption and noted that it does not indicate whether the exemption is for an academic school, classroom, or private recreational facility and under what statute the exemption was being granted.

Ms. Soo clarified that the exemption restricts the facility from operating for more than 16 hours; the children cannot enroll in more than one, 12-week session and, therefore, they must re-enroll in the program every 12 weeks. She noted that the applicant agrees with the exemption requirement and will abide by it.

Commissioner Fox inquired whether or not the exemption was actually for the classification of a classroom or for private recreation use. Ms. Decker replied that, as noted in Section 101158 of Title 22, this is the same exemption that is used for both recreational and tutoring centers. She explained that there are two conditions under which a program can operate for less than 16 hours and that what the Commission typically has engaged in is a discussion of a limitation of 16 hours per child per facility to meet the exemption. She continued that the same exemption allows a child to attend more than 15 hours per week that is not longer than 12 weeks in duration, which is treated as a back-to-back enrollment. She added that each project is considered on a case-by-case basis and that this project was evaluated based on the assessment and evaluation of Ms. Suzanne Bothwell of Community Care Licensing Office. She noted that the applicant will be able to operate within these constraints, primarily the second portion of it being that the program is greater than 15 hours per week and that the applicant is not desirous of limiting the attendance of children to 16 hours per week.

Chair Blank inquired if there is a re-enrollment process or paper trail such that the student receives a completion certificate and paperwork at the end of each session that goes on for 12 weeks to show that the student is not continuing in the program for 52 weeks. Ms. Decker replied that this particular program would be monitored by the State and the City has not been engaged in the process of looking at re-enrollment for 12-week back-to-back sessions.

Commissioner Pearce noted that it appears that the exemption encompasses everyone and inquired if there ever is a childcare facility for school-age children that would require a license. She further inquired what the purpose of an exemption might be if the children can be in programs for 20 hours per week and re-enroll in the same programs all year.

Ms. Decker replied that the State acknowledges that these sessions can be back-to-back and that students can re-enroll in the same programs. She noted that the State has a monitoring process that the City has not been engaged in. She stated that the Planning Commission has had various discussions regarding this and has expressed a certain discomfort in the titling of an exemption for continuous engagement in these programs with back-to-back enrollment, and whether or not such facilities are still considered a tutoring center or a childcare facility. She indicated that with respect to this application, staff has evaluated this particular program and believes that it meets the exemption that the State has provided.

Commissioner Fox requested staff to provide an actual printout of Title 22, Section 10158 in order that the Commission may see its exact wording. She noted

there was no outdoor area for children, stating childcare facility regulations are 35 feet per child in indoor areas and 75 feet per child in outdoor areas. She also questioned the number of maximum children on site at one time versus the number of the total enrolled in the program and inquired how this works out with crowding and adequate space issues. Ms. Soo replied that there would be a maximum of 90 children in 8,000 square feet of classroom and other areas.

Commissioner Fox inquired what the building occupancy type was for the proposed use and if it was required to be an E occupancy type since it is an academic program. She further inquired what the maximum occupancy load for the building was.

Ms. Decker replied that the building has a B occupancy and that the use is considered a tutoring center and not a childcare facility or a school, which would require an E occupancy. She stated that various discussions have occurred in terms of occupancy and how it would change; however, the use would continue to be maintained as B occupancy if no other changes were made.

Commissioner Fox stated that a B occupancy allows training and skilled development outside an academic school program, but since this has several categories, including an academic enrichment program, it should also have an E occupancy. She noted that one category states: "education or academic program for children between K-12th grade." She inquired how this could be a B occupancy when it is a tutoring school and an academic enrichment center.

Ms. Decker replied that the reason it complies with the B occupancy is because the actual tutoring and the program offered is outside of the State curriculum. She explained that the private school or E occupancy is specifically related to education of the State curriculum program. She noted that the classes offered in the proposed facility are to enhance those skills not specific to meeting a State requirement or accreditation for elementary education criteria.

In response to Chair Blank's inquiry regarding what the building's occupancy was at present, Ms. Decker replied that it is an office building under a B occupancy.

In response to Commissioner Fox's inquiry if the building was currently fire-sprinklered, Ms. Decker replied that she was not certain but that this could be determined.

In response to Commissioner Fox's further inquiry if the children are picked up from school and transported to the facility, Ms. Soo replied that they were.

Commissioner Pearce inquired if a tutoring facility was not necessarily related to State-accredited standard facilities. Ms. Decker replied that there is a specific difference in that the tutoring facilities and centers engage in a process to enhance and provide better skill sets for children, but they do not teach and are not designed

to teach the core fundamental criteria outlined by the State. She added that in this regard, this particular use falls under the B occupancy for training, skills, and learning, whereas a State curriculum-required facility would be an E occupancy. She pointed out that this particular tutoring program is specific to a niche that serves a certain population.

Commissioner Pearce noted that the school was engaged in activities such as helping children meet math standards or STAR testing results and standards and inquired whether it would truly be classified as an academic setting. Ms. Decker replied that it would still be a tutoring center because the threshold is not based on the State curriculum.

Commissioner Fox inquired if it is specifically stated in the California Building Code that E occupancy requires that there be a California Department of Education-mandated curriculum and if this could be also obtained along with the Title 22 citation. Ms. Decker replied that the Code does not state this but that the most recently adopted Code added a new classification in terms of a B occupancy that specifically states training and skills facilities, under which this particular use falls.

Commissioner Fox noted that this use appears to be a classroom environment where the ratio is not one tutor to one student. She stated that she believed tutoring would be for a small or high ratio of teacher to child. Ms. Decker replied that the City does not currently have a definition that identifies the student-instructor ratio. She added that the Commission recently approved a tutoring facility for Amy Cheng, the *MindBridge School*, whose ratios were fairly typical at 1:4 and 1:6. She noted that the ratios for tutoring are not limited to 1:1 and would differ depending upon the enrollment and the complexity of the subjects, such that there may be more demand for one class where there may be six children. She indicated that staff does not look at the ratio and has seen tutoring schools with ratios as high as 1:10, depending upon the subject matter.

Commissioner Fox noted that in public schools, Kindergarten to Third Grade is 20 children per class and inquired why the facility would not then be considered a classroom type of setting. Ms. Decker replied that this is based upon the type of topic presented, and the topic is not necessarily taught in the State school curriculum venue. She pointed out that the request is for a maximum of 90 children at the site, and while the 8,000-square-foot facility would accommodate a maximum of 90 children, it does not mean that every classroom will be filled with 12 children.

Commissioner Fox inquired whether or not children would be at the facility all day during the summer. Ms. Decker replied that she was not certain but that the hours of operation would be as shown in the narrative and would comply with the exemption.

Commissioner Fox expressed some confusion because she stated that for a lot of tutoring facilities in town, a student is tutored one or two hours per week, and it is not

a situation where they are in an environment for 30 hours per week. She noted that at a prior hearing regarding what the distinguishing differences were between a tutoring or gymnastic school and an actual childcare center where the students are being taught academic subjects, staff had responded that it would depend on whether a child is in a certain class schedule for one to two hours per week versus a long period of time per week.

Ms. Decker stated that the Municipal Code does not currently have a definition for tutoring schools as opposed to childcare centers. She added that the Planning Commission has struggled greatly through these discussions and that limitations that have been placed on other projects for 16 hours per week or 1.5 hours per day are related to the Commission's concerns regarding whether or not tutoring centers may be considered as childcare centers. She noted that a condition of approval has been placed on these projects such that there is a clear demarcation between the facility being a tutoring center versus a childcare facility.

Ms. Decker clarified that the request before the Planning Commission this evening takes into account the second section of that particular exemption and noted that the Commission has not been necessarily supportive of the back-to-back registration of 12-week sessions because of the concern that it does not become a childcare facility.

Commissioner Fox said in the past when one of these items went to the City Council, the City Attorney, Michael Roush, had stated there is a difference between the policy manual and what is actually in the statute which he relies on. She noted that the statute does not state 12-week back-to-back sessions, but the Community Care Licensing policy manual does talk about back-to-back sessions. She requested clarification regarding whether the Commission needed to abide by the statute or by the policy manual.

Ms. Seto noted that there are statutes but that what is specifically cited in the exemption letter is from a provision of the California Code of Regulations, a State regulation that, in effect, is like a statute. She added that staff has learned that Alameda County Community Care Licensing has its own manual and its own internal administrative policies by which the provisions are further interpreted. She noted that staff has been in communication with the Alameda County Counsel's Office to obtain more information about how the California regulations are being interpreted on an administrative level, and the results are still pending.

Commissioner Fox inquired if Title 22 could be printed off and provided tonight for the Commission. Ms. Seto replied that she could go to her office and obtain a copy. She noted that the regulation did include many different exemptions.

Commissioner Fox stated that Exemption 7 is public recreation program for less than 16 hours for a total of 12 weeks, operated by various agencies and not by a city or county agency; Exemption 8 is public and private schools that are run by school

districts; Exemption 9 is a school parenting program; Exemption 10 is a child daycare that operates only one day per week for no more than four hours on that one day; and Exemption 12 is the one she had requested earlier today which states: "any program that provides activities for children in an instructional nature in a classroom-like setting and satisfies both of the following: (a) is operated only during periods of the year when students in grades K-12 inclusive are normally not in session with the public school district where the program is located due to regularly scheduled vacations; and (b) offers any number of sessions in the period specified in paragraph (a) that when added together, do not exceed a total of 30 days when only school-aged children are enrolled or 15 days when children younger than school-age are enrolled in the program."

Commissioner Fox stated that Exemption 12 is what sounds to be most like the proposed use because it is a classroom-like setting, but it does not provide the 12-week back-to-back session provision and does not discuss 16 hours or less versus 16 hours or more. She added that she did not understand how the State could produce the letter and cite the statute when nothing in Section 101158 matches what is stated in the letter. She stated that she did not see the statute the State is referring to.

Ms. Seto reiterated that staff was trying to work with the County Counsel's Office to receive information about how that office has administratively decided to interpret these regulations.

Commissioner Fox stated that she was concerned by the fact that she did not see a match in the exemption letter to what is in the actual Code of Regulations. She noted that if the State is citing a California Code of Regulation which does not really exist or which the Commission cannot find, she was not certain how the Commission can or should rely on it. Ms. Seto stated there are many provisions in the same regulation under those same sections that give various agencies the authority to do their own implementation, and this might be the authority under which they are working to apply this.

Chair Blank noted that it also states that the exemption status is based on the Title 22 policy in Health and Safety Code Section 1596.792. Commissioner Fox stated that she believed that Health and Safety Code 1596.792 basically inherits Section 101158. Chair Blank disagreed and stated that according to the staff report, this project was approved as PCUP-179 in September of 2006. He noted that most of the people present were here in 2006 and that it might be useful to pull the conditions of approval that the Commission approved for the conditional use permit.

Commissioner Narum noted that Condition No. 5 of Exhibit B relating to a traffic mitigation fee was somewhat open-ended and requested staff to explain how this is determined and whether there would actually be a fee. Ms. Decker clarified that the project was originally proposed for a different location, and there was concern regarding traffic impacts at that site, although no traffic study was required for the

site. She noted that the proposed site is an office building with all traffic fees for office use already paid for at that time of construction. She added that a conditional use permit was then granted to the Korean Church where the actual trip rate is less than the office trip rate. She stated that staff looked at potential impacts regarding a tutoring use and found that as this project moves forward, the trip rate, although not identified by a traffic study, may increase and may trigger a fee over and above the office trip rate. Ms. Decker stated that Peter MacDonald, the applicant's representative, discussed with staff what this fee, if any, might be. She noted that if the traffic engineer should find that no fee is required, no fee would be paid; but if a fee to be assessed, staff would then hold more discussions with the applicant and her representatives. She indicated that the applicant and her representatives have expressed the desire to have a traffic study done to narrow down what the actual net increase might be, based on actual data. She added that they are amenable to the condition as written.

Commissioner Fox inquired if it was possible that the Licensing Office program analyst believes this is a public recreation program operated by a city, county, special district, or school district and this is the reason an exemption letter was issued. Ms. Decker replied that she could not comment on this and that the City relies on the State to evaluate programs based upon the narrative, site plans, and building plans the City sends over to the State Licensing Office. She added that the State Licensing Office is the authority in childcare exemptions and what needs to be licensed or not, and City staff relies on its determination as to what exemption might or might not be applicable. She noted that in this case, the State has indicated that this exemption is appropriate for a request for a conditional use permit.

Commissioner Fox noted that the State's letter appeared identical to what is written under Exemption 7a on page 17, which is clearly under a public recreation program. Chair Blank stated that he believed it was impossible for the Commission to determine the thinking of the analyst who wrote the letter. Ms. Seto reiterated that staff is trying to work with Alameda County to determine what might be any internal regulations that are not reflected in either the statute or regulation that the County uses to evaluate facilities and that staff has not received a response to date.

THE PUBLIC HEARING WAS OPENED.

Jennifer Zheng, Little Ivy League, stated that in 2005 she started the school with an idea for children to attend Chinese School and learn Chinese as well as to reinforce whatever they learn in regular school under the subjects of reading, writing, and math in a structured environment. She noted that the idea flourished, and the school is experiencing phenomenal growth, outgrowing the current facility. She indicated that she was fortunate to find the Korean Presbyterian Church, which has a total of 21,000 square feet. She stated that she has eight classrooms and a state-of-the-art multi-purpose room. She added that they were thrilled to have the new home and that many of the parents who support the facility are present in the audience.

Peter MacDonald, representing the applicant, indicated that they agree with the staff recommendation and conditions of approval. He stated that the school provides an incredibly important service to Chinese families in Pleasanton and that while it is a business that is to be regulated, the parents and children are those who would be affected. He noted that the school promotes a structured academic environment and provides Chinese language and cultural instruction, special tutoring, personal discipline training, and help with the students' homework. He added that the school also provides a safe, adult-supervised environment for school-aged children, particularly for working mothers who have to be at work.

With respect to whether or not a tutoring school will be permitted in Pleasanton, Mr. MacDonald asked the Commission to consider the effect of its decision on the parents of the students. He stated that the church is an ideal facility for the use with a symbiotic relationship that is both efficient and cost-effective, where the school uses it during the weekdays, and the church uses it on the weekends and weeknights. He indicated that it is a modern facility with no tenant improvements required, located in a site that is both convenient and accessible to parent, and has exclusive restrooms, entry controls, backdoor lock, and WiFi. He added that there are no other quality locations available in the City.

Mr. MacDonald stated that the applicant and her husband have worked hard for over a year to find a location acceptable to the City and practical for their use. He indicated that the lease at the current location expires in June and that the applicant was planning to purchase a location in the Hacienda Business Park but it was within 300 feet of a cell tower. He added that private schools are not allowed in residential locations, they do not work in office buildings for a number of reasons, and while they are allowed in shopping centers, they are not the ideal situation. He indicated that if business parks are off limits to tutoring schools, there will never be any practical locations in Pleasanton for the size of the proposed school.

Mr. MacDonald noted that the Hacienda Park Owners Association also supports this use and application. He stated that an anonymous complaint was received suggesting that the school was a daycare facility and not a tutoring school; however, while daycare facilities are not allowed by the Hacienda PUD, tutoring facilities are. He explained that the primary distinction is that licensed daycares involve children less than four years and nine months, and this is the basis of the letter in the packet from the State exempting the school from licensing requirements. He stated that the proposed facility does not accept children less than four years and nine months of age, and the State made that determination after full disclosure about how the business would operate. He noted that the State fully understands there will be times such as school vacations and summer where children will be at the after-school program for more than 15 hours in the same week, and this is the State's policy to interpret.

Mr. MacDonald stated that the State is willing to process a childcare license for the school at the proposed location if this is required, and the school is also willing to

process a childcare license even though it is not required if the City so requires it. He indicated, however, that the State should be left to interpret State regulations, and the City should interpret its zoning code. He added that the school would remain a tutoring school even if the City requires it to obtain a childcare license.

Mr. MacDonald stated that Staff acknowledges that neither daycare, childcare, nor tutoring schools are defined in the Municipal Code, which makes this a policy decision, and the Planning Commission is empowered to interpret the zoning ordinance. He indicated that the Commission's decision should be based upon the primary nature of the land use, the need for rules that best serve the interests of the people of Pleasanton. He, therefore, asked the Commission to determine the school as a tutoring school under the zoning code, an allowed use in the Hacienda Business Park, and to approve the staff recommendation and conditions as written.

Regarding Commissioner Fox's questions, Mr. MacDonald indicated that there are 58 students enrolled but are not there all day. He added that the facility's staff can handle 65 students and that they are applying to handle 90 students at the larger facility. He noted that the Building and Safety Division has always held that these types of tutoring facilities are not educational institutions. He stated that the issue arose to the City Council because someone was renting a 610-square-foot area across the street, and the Building and Safety Division required that a one-hour firewall around the office be installed. He noted that it was later found that this was not required for renting a space within a larger building. He further noted that the proposed building for the facility is very safe and is fire-sprinklered on the first floor.

Commissioner Fox noted that she remembered Mr. MacDonald from a project proposed by Mary Kay Berg. She stated that she thought Mary Kay Berg only had two or three students at one time, and Mr. MacDonald stated that she was actually expanding her use and was hiring more teachers.

Commissioner Fox stated that the Building Code indicates that if a child was in the facility for more than 12 hours a week or more than four hours a day, an E occupancy would be required.

Mr. MacDonald stated that when he brought the issue forward, the City reviewed the proposal and indicated that an E occupancy was intended to apply to schools that are mandated under State curriculum standards and that this was not such a facility.

Commissioner Fox inquired if this application of school standards was in writing and how they relate to the Building Code. Mr. MacDonald suggested that this be discussed with the City's Chief Building Official. He stated that there are many interpretations of codes and that he has already read the materials staff would soon provide. He indicated that he thought the question before the Commission was whether or not the proposal is a tutoring school. He reiterated that he felt the State should be allowed to interpret its own code, the Commission the zoning code, and the Council the Municipal Code.

Commissioner Fox stated that the State Fire Marshal's website talks about assisted egress in case of a fire. She cited the many facilities in town that are licensed, including the daycare facilities at Mohr and Lydiksen Elementary Schools. She noted that it was indicated that the main use of this facility is tutoring for families with working mothers and inquired if this, by definition, was childcare.

Mr. MacDonald replied that every tutoring school and every school is childcare by definition. He stated that the issue at hand is what the State's regulatory requirement is, and the State has made it clear that what it is really interested in and where there is no exemption available is places that have children aged four years and nine months and younger; the State allows for the exemption beyond that. He reiterated that the applicant is willing to apply for a childcare license if the Commission so desires. He inquired, however, if this would then trigger putting in firewalls in the facility. He stated that the applicant has a three-year lease and would then have to rebuild the entire facility to meet a new building code, which they do not want to do. He indicated that the facility should still be recognized as a tutoring school under the zoning code, even if the Commission requires the applicant to obtain a license.

In response to Commissioner Fox's inquiry regarding whether the building was an A3 type for church assembly, Mr. MacDonald suggested that she discuss this matter with the Building and Safety Division, stating that they when the Fire Inspector come out to inspect the building, the applicant inquired if the facility met the requirements for the proposed use, and the Fire Marshal had indicated that the building met the required standards. He added that they are willing to do anything that is within reason.

Commissioner Fox inquired if the building was sprinklered, and Mr. MacDonald confirmed that it was.

Commissioner Fox stated that many letters have been received classifying the facility as an academic school. She inquired if he considered this a tutoring facility or a school. Mr. MacDonald replied that the City's zoning code does not have a definition for a tutoring school, and, therefore, it would mean whatever policymakers make it to mean.

Chair Blank stated that he would like to see the Minutes of the prior approval. He inquired if, other than the number of students increasing from 58 to a maximum of 90, there are any differences between what they are doing with their current operation and their future operation. Ms. Zheng replied that nothing would change.

Mr. MacDonald disclosed that Ms. Zheng had inherited the use permit in that she leased the church after it had obtained a use permit to provide for after-school care.

Commissioner Fox stated that the project description in the old approval stated that the students walked to the facility after school and that there were no vans picking up the students. Ms. Zheng clarified that the previous applicant had staff picking up students and walking to the facility.

Chair Blank referred to the April 27, 2005 approval for Jennifer Zheng, Little Ivy League, and Ms. Zheng stated that they do not walk them to the facility; they now pick up the students in four large commercial vans that are commercially license and insured. She added that the entire facility is covered under commercial insurance.

Ms. Decker clarified that the April 27, 2005 conditional use permit, PCUP-138, was for location at 2340 Santa Rita Road and is not the one the Commission requested. She noted that the Commission requested PCUP-179, the original request for approval that was limited to 2.5 hours per day from 3:30 p.m. to 6:30 p.m. and from 3:30 p.m. to 5:30 p.m. on Friday. She noted that there are some differences between the two conditional use permits but that staff was looking at PCUP-179.

In response to Commissioner Fox's inquiry if this permit did not include all day during the summer months, Ms. Decker confirmed that was correct.

Elizabeth Shackelford, California Credentialed K-8 teacher, stated that over the last two-and-a-half years, she has worked at Little Ivy League teaching writing and phonics classes to students and that this year she has worked with 39 students in private and semi-private classes. She indicated that she felt the school should be considered a tutoring center and not a daycare, stating that each student has a schedule of where he or she is to be at each hour. She noted that the vast majority of classes are academic in nature, students are taught Chinese every day, and many parents sign-up their children for classes that meet once or twice a week. She stated that she works at the facility every afternoon with four or fewer students at a time. She added that many of these students speak English as their second language and receive one-on-one attention that they do not receive at school. She noted that the atmosphere is focused and academically rigorous and that they work to correct problem areas they have. She stated that she believes she has a unique opportunity to teach because it still allows her to stay home with her children during the day. She asked the Commission to approve the facility in its new location.

Vaughn Wolfe stated that he comes through the business park to come to the existing facility and will also come to the new facility assuming the conditional use permit is approved. He indicated that he is an engineer and his wife is from China; her wife's entire family is college-educated. He noted that today's newspaper included an article about competing math scores and that it is important to them that their son receive Mandarin Chinese training and advanced math. He stated that the only place their son will receive advanced math classes is in the GATE program or at Little Ivy League. He noted that China educates more English-speaking engineers than the United States and England put together. He stated that the children need to learn how to speak, read, and write Chinese and do advanced

math, and that there is nowhere else they can get it other than at Little Ivy League. He, therefore, requested the Commission to approve the application.

Leon Donn stated that he and his wife work in the South Bay, have two children aged 5 and 8 years who have attended Ivy League for over two years. He indicated that it is important for their children to be able to attend the program when school lets out to be able to increase their education and receive education in Chinese language and culture. He indicated that his older son now speaks fluent Chinese and that they are actually leaving for China tomorrow. With respect to working parents and the assumption that the facility must be a daycare, he begged to differ and indicated that there are many daycare facilities in the area, but they have not found one single program like Little Ivy League for language enrichment and Chinese training. He encouraged the Commission to approve the application.

Gary Kumfert stated that he never had an opportunity to master the German language and was never able to speak with his grandparents. He noted that he married a Chinese immigrant, and his daughter is now able to speak with her grandparents, which is very important to him. He voiced support for the school's growth and education and spoke of his experiences with day care, noting that he was told one day that he could not pick up his daughter in the middle of the session because she was in class, which he felt was great. He asked the Commission to approve the request as it truly serves families and children.

Qizhi Chen stated that he just moved to Pleasanton last December and that he loves the City of Pleasanton. He indicated that his five-year old daughter loves Little Ivy League School and has learned a lot of Chinese there. He stated that he supported approval of the school.

Kevin Yip stated that his wife works in Hacienda Business Park and spoke of his desire for his children to speak and learn Chinese. He noted that he registered them for a weekend Chinese school that they did not like; he then learned about Ivy League School and registered his children there, believing that Chinese needs to be practiced every day. He noted that the school has a variety and quality of classes and teachers, and urged the Commission to approve the request.

Ray Xu stated that the school provides excellent Chinese classes for language and writing for his six-year-old son and that the teachers are well qualified and kind. He added that he believes it would be better to have a larger facility and requested the Commission to approve the request.

Frank Huang stated that Little Ivy League is a very organized school, is family-oriented, and has many good programs. He indicated that he is able to work and have the school pick up his 10-year-old child from school and learn. He added that his son is able to finish his homework and even wants to go to the school on weekends. He stated that he has many friends who are excited about enrolling their children at Ivy League and encouraged the Commission to approve the request.

At this point, Chair Blank noted that there were still a number of speakers for the hearing and inquired if any of the items should be continued. Commissioner Fox suggested continuing Item 6.d., PUD-75/PSPA-3, Robert Wentworth, and Item 6.e., PAP-130, Phil Blank and Anne Fox (PDRW-13, Katie Belmonte). Ms. Decker recommended that the Commission continue Item 6.d. and Item 6.e. to January 14, 2009.

Ms. Seto noted that Item 6.e. should be opened because it is an appeal item and the City is required to hear it within a 40-day period. Chair Blank asked if there was anyone in the audience who would not be able to attend the January 14th hearing for Item 6.d or item 6.e. An audience member noted that she would like to speak under Item 6.e., and Chair Blank noted that per the Commission Handbook, the Commission is not required to open and hear a new item after 11:00 p.m.

Commissioner Fox moved to continue Item 6.d., PUD-75/ PSPA-3, Robert Wentworth to January 14, 2009.

Commissioner Narum seconded the motion.

ROLL CALL VOTE:

AYES: Commissioners Blank, Fox, Narum, O'Connor, and Pearce.

NOES: None.

ABSTAIN: None.

RECUSED: None.

ABSENT: Commissioner Olson.

The public hearing for PCUP-224, Little Ivy League School, was then resumed.

Larry Lai stated that he moved to Pleasanton because of its schools and that his five-year-old son has been attending Ivy League for about six months. He stated that he believed it is a wonderful Chinese program where his son learned to read about 200 Chinese words. He indicated that he wants his son to be able to speak Mandarin and that he believes the weekend schools do not provide enough Chinese training. He indicated that he felt Ivy League offers a unique program and that the course material is superior in that it incorporates classic Chinese poetry, literature and culture. He asked the Commission to approve the request.

Winnie Zhang stated that her daughter started attending Little Ivy League in 2005, noting that prior to this, she had the option to attend other schools, but found that they were not as comprehensive as Little Ivy League. She noted that Ivy League has tutoring, structured programs, Chinese, and homework time and that her daughter has made significant progress. She asked the Commission to approve the school.

Nan Leng voiced support for Ivy League and said he believes the school is good for students and for Pleasanton.

Yi Yang shared her child's education experience, stating she moved to Pleasanton in 2002 for better schools and academic focus in after school programs. She stated that her nine-year-old daughter is now able to write in Chinese through attendance at Ivy League. She noted that her younger, seven-year-old daughter went to Kids Club for two years, but she did not learn enough; she then joined Ivy League this last summer and has made great progress. She asked the Commission to approve the application.

John Dieffenbach stated that he has a daughter who is enrolled in John Green in Dublin and that he and his wife needed a tutoring center in Kindergarten. He indicated that they tried a couple of programs that did not work before they found Ivy League. He stated that she received tutoring at the school and received one-on-one training, and they saw significant improvement in the first three weeks. He noted that they are very pleased with the school and asked the Commission to support the application.

Stephanie Lin introduced his son, William Fang, who had spent time writing his speech to the Commission. She echoed comments of the other parents and indicated that she believed the school is offering a very comprehensive program, is consistent in its teachings, and offers caring cultural programs and education. She asked the Commission to support staff's recommendation for approval.

William Fang stated that he has been in Ivy League for three years and that they have Chinese class every day, language arts like writing, reading, and spelling, accelerated reading tests after reading a book, accelerated math, homework time of 45 minutes, and if they do not finish, they go to homework club to finish. He stated that they get all the free time they want from 6:10 p.m. to 6:30 p.m. He noted that today, 20 percent of the world speak Chinese, and 15 percent speak English; he noted that this school teaches both languages. He added that the school evolved from a small school of 30+ students to a 60-student school, and now the students need more space so they can have more fun and education. He asked the Commission to vote yes so they can move to their bigger and better building.

Rachel Tu stated that she and her husband moved to Pleasanton last year and that they have a special needs child. She voiced concern about the level of academia in public schools, discussed her research in supplemental education, and stated that she believes Ivy League is perfect. She stated that the school is very structured and offers advanced math, Chinese language, culture, and writing skills and that six months later, her son's skills have improved, and he can now talk with his grandparents fluently in Chinese. She stated that she can see the program expanding for the benefit of the entire community.

Sonia Gupta stated that when she went back to work, she wanted a good quality after-school program for her son and was very impressed with Ivy League's programs. She noted that he gets good grades, completes his homework, participates in swimming, and can focus on activities other than academics. She said that after seven months, her son is now speaking Chinese to his friends, is multi-lingual, and is extremely proud of the school. She expressed her support for the school's move to a bigger facility and asked the Commission to approve the proposal.

THE PUBLIC HEARING WAS CLOSED.

Chair Blank called for a ten-minute break at 9:00 p.m. and thereafter reconvened the regular meeting.

Chair Blank thanked all those who provided testimony and indicated that staff has done additional research during the break regarding the previous history and would provide further explanation.

Ms. Decker corrected an earlier error that PCUP-179 is the use permit for the Korean Presbyterian Church, which is not affiliated with Little Ivy League or any of its programs. She provided a history of Little Ivy League's growth over time, indicating that the first conditional use permit related to Little Ivy League was PCUP-84, an application for a daycare facility, approved in August of 2003 for 32 children at 4455 Stoneridge Drive, the Pleasanton Community Church site.

Ms. Decker continued that the second action was PCUP-138, which was the original request by Little Ivy League for a facility at 2340 Santa Rita Road and approved for a maximum of 30 students, Monday through Thursday for 2.5 hours per day and Friday for 2 hours. She noted that in response to an earlier inquiry by the Commission if the program represented this evening to the Commission is the same as what was approved per a conditional use permit, the answer is "no," based on the first conditional use permit issued to Little Ivy League.

Ms. Decker then stated that a third action which should be noted is PCUP-143, an application by United Youth Enrichment, a program very similar to Little Ivy League, which was established under the first action earlier described, PCUP-84, at 4455 Stoneridge Drive. She noted that the reason this approval was under the Pleasanton Community Church was because tutoring would not be allowed at this site without an umbrella, which was the church. She added that as a result, the church applied for a use permit as well as for an expansion to serve as the umbrella parent, effecting the operation of the United Youth Enrichment as an ancillary use of the church, for an after-school program for a maximum of 25 students. She noted that the church operated its daycare separately for 32 children, bringing the total number of children at the site to a maximum of 57.

Ms. Decker stated that at some point, United Youth Enrichment vacated the site and was replaced by Little Ivy League under the auspices of that use permit, and in 2006, Pleasanton Community Church vacated the site and Fountain Community Church took over the conditional use permit. She noted that as a result, Fountain Community Church and Little Ivy League were now operating under the same use permit of Pleasanton Community Church and United Youth Enrichment.

Ms. Decker explained that use permits run with the land, and a similar facility can operate at the site without any other entitlement provided it complies with the hours of operation and number of children. She added that the Director of Community Development may evaluate and approve a request for extended operating hours if found to be in substantial conformance to the use permit; however, this did not occur at this site.

Ms. Decker noted that in this regard, staff has provided the Commission with an e-mail from Mr. Kevin Ho expressing concerns on the operations at 4455 Stoneridge Drive, to which Ms. Soo has provided answers. Ms. Decker stated that this e-mail is coincidental with an action by the City's Code Enforcement Officer who visited the site where Little Ivy League was located to determine if it was operating under the original United Youth Enrichment program's use permit of 25 students. She noted that the Officer found that the facility was not in compliance, having about 50 to 60 children at the site.

Ms. Decker continued that in light of the concurrent application submitted to the City, Little Ivy League then submitted an application to locate at 4430 Willow Road, to be held together with and adjacent to a suite with an application for Fountain Community Church, which was processed and recently approved by the Commission. She stated that during Little Ivy League's leasing process, it determined that the site was no longer viable and found the site at 5925 West Las Positas, which is before the Commission this evening. She noted that the Code Enforcement action begun for 4455 Stoneridge Drive was then held in abeyance because an application had been submitted for a different site. She added that this action is not uncommon with the City's processes.

Ms. Decker noted that the Commission had requested the Minutes of the meetings at which PCUP-143 and PCUP-138 were approved and had inquired if the conditions of approval had changed between these actions. She indicated that PCUP-138, the original Little Ivy League approval at 2340 Santa Rita Road, was limited to 30 students at 2.5 hours a day, and PCUP-143, United Youth Enrichment, has a limitation of 25 students for after-hours as well. She noted that while the conditions for both actions were essentially the same in nature, the number of conditions did change, from six conditions for PCUP-138 to nine conditions for PCUP-143. She added that the current application under consideration has 19 conditions and have more criteria to abide by.

Commissioner Fox noted that the narrative for the application at hand talks about a private recreation facility exemption; however, it appears that Item G of the statute on page 6 appears to correspond to the public recreation program that is referred to in Exemption 7 on Section 101158 of Title 22; and Item L of the statute, the activities for children in an instructional nature in a classroom-like setting, but only for summer and only for 30 days or less, corresponds to Exemption 12 in Section 101158. She inquired where private recreation for the facility as an exemption criteria is based on when the California Code of Regulations does not have it listed as an exemption category and it is not included in the statute as well.

Ms. Seto replied that this is the area that the City is trying to clarify with the County in terms of how the County is looking at and interpreting the statute and regulation.

Chair Blank inquired if the facility, based on the information now known of the facility, including its 58 students, would be in compliance with the approved conditions of the use permit at its existing site if it were to stay at that location. Ms. Decker replied that it was not in compliance, and this is the reason why it has applied for a new location and why the Code Enforcement process was placed in abeyance. Chair Blank inquired if the prime distinction of the non-compliance was the number of students or the nature of operations and hours. Ms. Decker replies that it was both the number of students and the hours of operation.

Commissioner Fox noted that based on the testimony presented, it appears that the program is excellent and students are deriving benefit from the program; however, she is uncomfortable with this having an exemption when the California Code of Regulations and the statute do not specify the exemption that corresponds with the letter from the State. She stated that she thinks the Korean Church facility is a good location but that she would prefer that a childcare license be obtained.

Chair Blank asked Commissioner Fox the reason for her preference when there is no student at the facility less than five years old. Commissioner Fox replied that State law does not say anywhere that a childcare license is only required for children 4 years, 9 months. She added that the California Code of Regulations does not require a license for children older than 4 years, 9 months. She noted that the children at KinderCare, La Petite Academy, and Quarry Lane After-School Program are older.

Chair Blank reiterated his point that there are no exemptions for those less than 4 years, 9 months old. Commissioner Fox disagreed and noted that it is stated that in a public recreation facility, the program is provided for children under the age of 4 years, 9 months for sessions that run 12 hours per week or less and that are 12 weeks or less in duration; the program shall not permit enrollment in a combination of sessions that total more than 12 hours per week for each child. She noted that this is a public recreation exemption and that this is what Gingerbread House operates under today.

Chair Blank expressed concern about the Commission directly interpreting State law.

Commissioner Pearce inquired if staff foresees any unintended consequences stemming from the Commission requiring the applicant to go and obtain a childcare license as she has indicated she is willing to do, such as triggering a change to the E class occupancy.

Ms. Decker replied that if the Planning Commission were to consider this facility as a childcare center, the occupancy would change from a B to an E, which may or may not then require additional modifications to the structure, depending on a determination to be made by the Building Inspector and the Fire Marshal. She noted that in addition to that, Hacienda Business Park does not currently allow childcare use within the Park, which would mean that a PUD modification would need to be processed. She added that a third consideration would be that an outdoor play area would be required for a childcare license.

Commissioner Fox noted that the Hacienda Child Development Center, a childcare facility, is currently on Chabot Drive across from the Post Office and within Hacienda Business Park. She indicated that she was under the impression that a PUD modification was already in place. Ms. Decker clarified that this location has a different zoning district. Ms. Soo added that the proposed site is within an Industrial Park zoning district where childcare is not a permitted or conditionally permitted use and would require a PUD modification.

Commissioner Pearce stated that it appears to be a great facility. She noted that she visited the site today and met with the applicant and Mr. MacDonald and added that her five- year old now wants to go there and learn Chinese. She indicated that her concern is that she wants to make sure that appropriate protections are provided, given the number of hours that the children are in the facility. She inquired if there was a way to do that while being consistent with previous applications and acknowledging that there may be unintended consequences while honoring the spirit of what the Commission is trying to do. She further inquired if the Commission could simply condition the applicant to conduct criminal background checks or outdoor space if that is what the Commission is concerned about. She indicated that she would like to create quality childcare in the City while being consistent with prior applications but also recognizing that unintended consequences may result from requiring the applicant to get a childcare license. She noted that the E classification was creating issues for her, and this was not necessarily something that she sees as a potential consequence. She added that the facility looks great, and while she would like to get the protections and conditions, she did not want the applicant to have to go through the PUD modification process.

Chair Blank concurred that the program is great and stated that it is unfortunate it fell out of compliance with the existing PUD. He noted that all the testimony given were very positive and none about why the program should not continue or should not be

expanded. He indicated that he wants to be careful about requiring the applicant to obtain a childcare license just because she is willing to do this, and then suddenly finding out that two-hour firewalls have to be installed throughout the church. He stated that he wants to be careful to get the value of the issues the Commission is concerned about, as opposed to simply requiring the applicant to get a childcare license so the Commission does not have to worry about it. He added that the State might then suggest that it believes a childcare license was not issued appropriately. He stated that he believed there was a point at which time the Commission should determine what point it is most concerned about, and this was a very slippery slope.

Commissioner Narum agreed with Chair Blank and stated that what was most important to her would be the criminal background check, a disaster plan for fire and earthquakes, first aid training, whether or not there would be an outdoor play area and what it would look like, all without imposing unnecessary conditions. She indicated that she visited the facility and met with the applicant and Mr. MacDonald. She noted that there is clearly a value and need in the community and that the Commission needs to find a balance in allowing the facility to operate while satisfying the Commission's concern for safety. She added that she also likes the sign-in and sign-out condition, which is already contained in the application.

Commissioner Fox stated that for safety reasons, she would like to ensure that the facility complies with the Building Code for the types and numbers of children who are in the facility. She noted that the Code is there not to put financial burdens on tenants but to protect the public health and safety of the occupants because congregations of children where there are less adult-to-student ratios trigger the Building Code. She indicated that it is not just a matter of updating the building from a B to an E occupancy, but ensuring that a fire that occurred in 2004 at the after-school program across from Dublin Elementary School that burned the building to the ground within one hour does not happen here. She noted that it was fortunate that there were no children in the facility at the time of the fire. Chair Blank noted that that building was not sprinkled.

Commissioner Fox continued that she would like to have the E occupancy in place because State law puts that requirement in place to protect children in numbers of that magnitude. She noted that skirting the regulations is not in conformance with the California Building Code and that she would not support the facility remaining in B occupancy just because it might be financially restrictive.

Commissioner Narum stated that she did not feel the Commission was skirting State law, but rather, the Commission is honoring the State exemption in place while adding further protections, which is the Commission's right to do for businesses in Pleasanton and for the community.

Commissioner Pearce inquired if additional conditions to the application were to be in effect prior to operation of the business in the new building. Ms. Decker replied that would be the case. With respect to ensuring that the occupancy or tenancy in

the area meets the Code, she noted that Condition No. 15 requires that the applicant contact the Building and Safety Division and the Fire Marshal prior to the issuance of a business license to ensure the proposed use of the tenant space.

Chair Blank noted that the applicant had that she had contacted and met with the fire and building officials, who inspected the sprinklers and emergency exits and deemed them appropriate for the use.

With respect to the comments made by Commissioner Narum, Ms. Decker stated that those conditions could be added; however, she recommended that the Commission reconsider the requirement for an outdoor play area as there is no real accessible play area on the site other than the parking area, and the adjacent structure and use has numerous truck deliveries on site. She noted that staff has not evaluated this and recommended that if the application were conditioned to require an outdoor play area, the Commission also provide the flexibility to have the Director of Community Development review and make the final determination to ensure the safety of the children.

Chair Blank stated that the program does not seem like the kind of school where the children are in romper room all day but has structured timeframes where the children go from one class to another. He noted that in this sense, he felt an outdoor play area would not be as critical.

Commissioner Pearce inquired if the conditions would be crafted such that they would need to be complied with prior to the issuance of a business license or some other event. Ms. Decker replied that the Commission could condition them prior to occupancy or obtaining a business license. She noted that as stated by the applicant, the Fire Department has visited the facility, and the facility is currently ready to be occupied. She added that the applicant would need to contact the Building and Safety Division prior to occupancy and would require a business license.

Commissioner Narum stated that if the facility's staff would be required to have CPR and first-aid training before a business license is issued, it could take some time to find a class and complete certification. Ms. Decker clarified that they would not be able to occupy the building without a business license. Chair Blank indicated that he believed the training was easy to locate and secure. Ms. Decker recommended the following language for the condition: "The applicant shall obtain first-aid training and CPR within three to six months of the date of occupancy and provide verification for the file."

Commissioner Fox inquired if the City would be liable with this type of condition in place should there be a situation where a child is injured at the facility and is not able to receive CPR because there is no one in the facility qualified to administer it. Ms. Seto said no. She explained that generally, the City is not liable, for example, if it approves the building and the accident occurs in the parking lot. She added that

the facility is checked every two years to ensure it remains current with certifications. Chair Blank noted that there is also the Good Samaritan law, which relieves someone of liability.

Commissioner Fox further inquired if the City could be liable if the reason the facility is not licensed is because an exemption has been put in place, which is not backed by State law and by the California Code of Regulations. Ms. Seto replied that with the current application, the City would be relying on the State's exemption provided by Ms. Suzanne Bothwell's letter, Exhibit D of the staff report.

Commissioner O'Connor noted that the exemption is obviously not for the 16 hours or less and inquired what it was based upon for this application. Ms. Seto replied that the Department of Social Services has indicated and granted an exemption for the hours of operation or a facility that operates for more than 15 hours but no more than 12-week sessions. Commissioner O'Connor then inquired who was responsible for ensuring the sessions are no more than 12 weeks. Ms. Seto replied that it is the responsibility of the County's Community Care Licensing under the State Department of Social Services.

Commissioner Narum stated that she would be open to eliminating Condition No. 9 regarding children being escorted to and from the restroom. She then referred to Condition No. 16 and inquired about the use of the word "church." Ms. Decker replied that Condition No. 9 referred to the application at a previous location that had common restrooms outside the facility and would not be applicable at the new location as the restrooms are located within the facility. She added that Condition No. 16 also referred to the previous applicant and can likewise be deleted as the church is not relocating.

With respect to the outdoor play area, Commissioner Narum stated that she did not visit the new site and expressed concern during the summer when the children would be on-site from 8:00 a.m. to 5:00 p.m. She indicated that she would not want to see the children limited to inside a building during that time but would like them to have some kind of outdoor recreation breaks.

Commissioner Pearce stated that she did not want to tell the applicant how to run the facility's program. She suggested that staff craft some language indicating that this would be reviewed by the Director of Community Development.

Mr. Dolan agreed and advised the Commission that it is likely the only logical place for an outdoor play area would be in a fenced-off portion of the asphalted parking lot where pads might be put in.

Chair Blank noted that Quarry Lane School's outdoor play area is all asphalt and concrete. Commissioner Fox suggested having something like the foam surface at Orloff Park or a rubber material that covers the parking lot at the Fountainhead Montessori in Dublin. Commissioner Pearce stated that she did not want to get into

designing the area. Chair Blank suggested the language: "There must be an outside play area, subject to the review of the Director of Community Development."

Ms. Decker noted that Little Ivy League has been operating its program successfully for over three years and has not had a need for an outdoor play area.

Commissioner Fox noted that the Little Ivy League children have visited Nielsen Park and have used it as an outdoor play area. Ms. Decker stated that she was not aware of this but that the approved program does not require an outdoor play area or excursions to parks.

Commissioner O'Connor noted that other childcare facilities require outdoor play areas and inquired if schools do not have that regulation. Ms. Decker replied that was correct. Commissioner O'Connor stated that if this is a tutoring school, then there would be no requirement for an outdoor play area. He questioned the distinction between this and a childcare facility.

Commissioner Pearce suggested doing something consistent with prior applications such as access to fresh air as opposed to creating an outdoor play space, to be reviewed by the Director of Community Development. Commissioner Narum agreed and reiterated that she did not want the children to be in an enclosed facility for eight or nine hours in the off-school year.

Commissioner Pearce moved to make the required conditional use findings as listed in the staff report and to approve Case PCUP-224, subject to the conditions of approval as listed in the staff report, with the following modifications: (1) Conditions No. 9 and No. 13 shall be deleted; (2) All adults working in the facility shall be required to undergo first-aid and CPR training prior to issuance of a business license, and the applicant shall ensure that these certifications are current at all times; (3) All adults working in the facility shall be required to undergo criminal background check; (4) The applicant shall prepare and submit a disaster plan to the Planning Division prior to issuance of a business license; (5) The applicant shall prepare and submit a plan that ensures fresh air access for the students during hours of operation as feasible, subject to the review and approval of the Director of Community Department. Commissioner Narum seconded the motion.

ROLL CALL VOTE:

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

NOES: Commissioner Fox.

ABSTAIN: None.

RECUSED: None.

ABSENT: Commissioner Olson.

Resolution No. PC-2008-60 approving Case PCUP-224 was entered and adopted as motioned.

Chair Blank informed the public that the decision would take effect in 15 days unless appealed.

a. **PUD-85-09, Sunrise Senior Living**

Review of the determination made by the Director of Community Development on substantial conformance of the Sunrise Senior Living facility with the approved PUD-85-09 located at 5700 Pleasant Hill Road. Zoning for the property is PUD-C-O (Planned Unit Development – Commercial-Office) District.

Mr. Dolan presented some introductory comments, stating that staff had brought forth its consideration of its being in substantial conformance with a previous approval. He recalled for the Commission that this generated some controversy with the neighborhood, mostly related to the number of stories of the original approval and the intensity of the proposed facility. He added that there was some inconsistency in the historic documentation that staff was able to gather. He noted that instead of taking action, the Commission requested staff to set up a facilitation process between the applicant and the neighbors.

Mr. Dolan stated that the City hired a private facilitator, funded by Sunrise Senior Living; staff then asked the neighbors to select a group of representatives and set up a process to cover three meetings with the facilitator. He noted that both parties worked hard and in good faith to determine whether there could be a project that would have a broader support of the finding of substantial conformity. Mr. Dolan stated that the applicant was very responsive on many issues and made several revisions to the design. He noted that by the end of the third meeting, staff felt the project met the applicant's needs and addressed many of the neighbors' concerns. He added that although there was not unanimous support on every issue by neighbors, there was general support for the steps Sunrise has taken. He indicated that staff has not been so insistent that the building look exactly like it did the last time, and the applicant has been liberal in interpreting and addressing the neighbors' concerns.

Mr. Dolan then recommended that the Commission make the finding of substantial conformity with the application submitted.

Ms. Giffin then presented the staff report and gave a brief description of the modifications to the project plans, including the elevations, the colors and the materials, and the signage. She then presented a table comparing the elements of the revised proposal to the 1985 proposal.

Commissioner Narum requested a view of the elevations along Foothill Road. Ms. Giffin stated that it was included in the packet in black and white.

Commissioner O'Connor referred to the driveway going towards Foothill Road and inquired if this was a two-way road. Ms. Giffin replied that this was for egress only.

She noted that a two-way driveway would require a more substantial retaining wall and a significant amount of grading. She added that the City's Traffic Engineer has reviewed the proposed exit lane and noted that if an ingress were provided, a queue lane would need to be provided for the facility and moved onto the site.

Commissioner O'Connor inquired what would prevent someone from entering the site at this driveway. Ms. Giffin replied that the lane would most likely have an "exit only" sign and added that the Commission could condition this to be such.

Commissioner Fox inquired if the previous approval included 132 beds or units. Ms. Giffin replied that they were units. Commissioner Fox requested clarification that the new proposal had 82 units but 103 beds. Ms. Giffin confirmed that was correct. Commissioner Fox then inquired if Alzheimer units would still be provided, and, if so, how many there would be. Ms. Giffin replied that this was revised during the facilitation process and deferred the question to the applicant.

Chair Blank noted that the Commission often talks about "the Pleasanton look" and inquired if there was discussion during the facilitation process about the project being made to look more like Pleasanton. Mr. Dolan replied that two design styles were considered: one was a Mediterranean stucco-tile roof and the other was more of a Craftsman look. He stated that he is not familiar with "the Pleasanton look" but that he believes the proposed design fits Pleasanton, particularly with the adjoining site. He noted that the applicant is willing to go with either architecture and that a significant majority preferred the Craftsman to the Mediterranean style.

Chair Blank stated that he felt the stone veneer did not quite look right but that it may just be in the rendition. Commissioner Narum stated that viewed from the entry elevation with the trees and the creek to the back, she felt this was absolutely perfect for this site and certainly much better than what was shown at the last meeting.

THE PUBLIC HEARING WAS OPENED.

Frank Rockwood, Sunrise Senior Living, stated that he and his staff have devoted a lot of time and effort in the project since last June. He extended his appreciation for the work of their team, Mr. Dolan and Ms. Giffin, the mediator, and the neighborhood representatives. He noted that it was encouraging that several members of the Commission were supportive of the use on the site and that he believes this is the best site for the project they are proposing with its strong visibility and its accessibility to medical and shopping facilities.

Mr. Rockwood noted that they entered the facilitation process with an open mind but they clearly needed to work within the economies of scale and the critical assumptions and constraints of their business, including an assumption made early on that they would not be required to provide affordable housing. He indicated that he was delighted with the outcome of the mediation process and that he believes

they met the neighbors more than halfway. He stated that he felt the most critical issues were the height and massing of the building from 47 feet high and four stories to 32 feet high and two stories; the orientation of the building, moving the front door from Pleasant Hill Road to Stoneridge Drive; and traffic and vehicular access, moving the egress onto Foothill Road and relocating the service area farther away from the neighbors to the other side of the building with access onto Foothill Road. He noted that the setback from Pleasant Hill Road was increased by more than 15 percent. He added that he believed that articulating the building with quality materials, roofing, and other elements demonstrated a high-quality project that enhances the neighborhood.

David Gates, project landscape architect, stated that there are differences between the previous scheme and the proposed design. He noted that there is now a riparian corridor with vegetation that is 50 to 80 feet tall, and what was an activity front facing the neighbors became a 50-percent reduction in parking and more than a football field of landscaping, set back farther and lower so that the activity in drop-off and service was split and relocated away from the neighbors. He noted that the landscaping is soft, and the building is designed so that the closer elements are small and then recedes to towers, which provides articulation. He added that there is a grade difference between the project site and Foothill Road so that Foothill Road sits five feet above the site, and the parking, which was one large lot that wrapped around, is now broken into two sections.

With respect to architecture, Mr. Gates stated that there are roof rafters and braces and a fair amount of stone, which will break the scale with the shingles and provide a (Bernard) Maybeck historical character that works with the vegetation. He noted that the building has a lot more light than what the graphics actually show.

Mr. Rockwood concluded by stating that Sunrise is the best senior housing that is yet to be invented and that they are always looking for ways to do better. He indicated that he believes this project will be the nicest they have ever done. With respect to Commissioner Fox's inquiring regarding provisions for Alzheimer patients, Mr. Rockwood stated that there would be about 29 units or approximately 1/3 of the total number of units.

Commissioner O'Connor stated that he liked the architecture and felt the revised plan is a huge improvement and is impressive and goes well with the surrounding area.

Chair Blank stated that diagrams L.I.4 through L.I.6 were nicely done and that he liked L.I.5's lighter roof as an element. He noted that the roof material looked to be very dark in material and did not look like a Pleasanton residential roof, which was typically of a lighter color.

Commissioner O'Connor noted that the roof of the Lemoine Ranch homes was asphalt.

Mr. Rockwood then handled the color and materials board to the Commissioners.

THE PUBLIC HEARING WAS OPENED.

Gary Lohr stated that as a participant in the facilitation process, he commended Sunrise for the revised project. He stated that he is on the Board of Directors of the Gold Creek Homeowners Association and that he discussed the revised plan with many neighbors who are very satisfied with it. He noted that one of their concerns all along has been adequate parking, and many neighbors do not want the number of spaces reduced and suggested a parking ratio of .75 spaces per unit in order to self-contain the facility. He stated that the current plan has a parking ratio of .61 spaces per unit but noted that there are about four times more employees in this current plan. He stated that they want to avoid the necessity for parking on the street and cited potential traffic safety hazards. He requested that should the Commission approve the project, it add a condition to provide adequate parking. He then thanked all the participants in the facilitation process.

Bob Binder stated that he is Mr. Lohr's neighbor and voiced similar parking concerns regarding ratios and numbers of parking spaces. He indicated that he likes the revised plan and how it is spread out so that impacts are spread among the neighbors. He expressed support for the revised 30-foot high building, the trash receptacle area, and the exit.

Ron Williamson stated that the neighbors initially had 12 outstanding issues to be resolved and Sunrise initially addressed 1.5 of those 12 issues. He noted that going into the third meeting, they did not have a lot of confidence that issues would be resolved, but Sunrise returned with about a 70-percent conciliatory proposal, which was amazing and encouraged the neighbors to engage in the final discussions.

Mr. Williamson stated that they still have concerns which include: (1) a 30-percent level for the dementia ward; (2) a reduced number of employees; (3) a lighter-colored roof to go with the brown and green hills in the background; (4) no bars on the windows; and (5) background checks for employees. He complimented Mr. Dolan for his work and the process of hiring the right facilitator.

Rick Shemp stated that he was on the facilitation team and voiced concern over the roofline and the physical structure that holds the sign. He noted that Sunrise has indicated they are willing to come up with other options. He then thanked Mr. Rockwood and the Sunrise Team as well as Mr. Dolan and Ms. Giffin. He suggested the Commission to place a timeline on the project rather than leave it open-ended.

Mr. Rockwood clarified that there are no bars on windows or wired glass inside the windows and indicated that they would look for opportunities to improve the signage.

Commissioner Narum indicated that she had spent a fair amount of time with the Williamsons to understand their concerns. She thanked Sunrise for participating in the mediation process and stated that she is thrilled with the outcome of the project in terms of how it looked, its fitting-in with the neighborhood, and its providing a needed amenity to the community.

Commissioner Fox thanked the neighbors for getting involved and working hard to participate in the process and thanked Mr. Dolan and Ms. Giffin for their work as well. She referred to Sheet L.I.2.; the diagram of the lighter roof, and Chair Blank noted that Sunrise has agreed to lighten the roof and work with the neighborhood. He pointed out that three Commissioners supported the roof color of the birdhouse on the left side of the diagram.

Commissioner Fox stated that she felt the sign was too big at five-foot seven-inches tall and suggested that it be reduced by two feet. Chair Blank noted that Sunrise has likewise agreed to work on the sign and with the neighbors.

Commissioner Fox noted that there are three handicapped parking spaces and inquired whether the number of spaces should be increased. Mr. Dolan replied that staff can review this and will require the numbers of spaces per regulation. He also confirmed that the majority would rather have concrete parking spaces over grass.

Commissioner Fox referred to Sheet C-2 and inquired if the Foothill Road was for exit only and would have no ingress. Ms. Giffin replied that was correct. Commissioner Fox suggested it be made exit and right-turn only. Commissioner O'Connor noted that there is a median at that location and would only allow a right turn.

Commissioner Fox inquired what the squares on the Sheets from C-1, C-2 and C-3 were and if there would be a sign on the corner of Foothill Road and Stoneridge Drive. She further inquired where delivery trucks would access the site and fire turn-around requirements. Ms. Giffin replied that the squares were wheelchair access ramps and that all ingress would come off of Pleasant Hill Road including delivery trucks, which are currently proposed to load and unload by the trash area. She noted that Sunrise has agreed to move the trash area a few feet to the south to ensure there is enough room for the 20-foot fire turn-around clearance. She added that there is also an emergency vehicle access (EVA) proposed around the building so fire trucks would not need to back up.

Commissioner Fox referred to Sheet C-2 and inquired what the black line next to Foothill Road might be. Ms. Giffin replied that she believed it was a retaining wall and asked the architect to clarify this. Mr. Gates stated that is a landscape strip that separates the sidewalk from the EVA.

THE PUBLIC HEARING WAS CLOSED.

Commissioner Narum moved to make the findings in support of the Zoning Certificate as listed in Exhibit K of the staff report and to confirm the Zoning Administrator's determination that the project is in substantial conformance with the 1985 approval of PUD-85-09.

Commissioner O'Connor seconded the motion.

Commissioner Fox proposed an amendment to add language indicating that the building will be limited to two-stories.

Commissioner Narum and Commissioner O'Connor accepted the proposed amendment.

ROLL CALL VOTE:

AYES: Commissioners Blank, Fox, Narum, O'Connor, and Pearce.

NOES: None.

ABSTAIN: None.

RECUSED: None.

ABSENT: Commissioner Olson.

Resolution No. PC-2008-61 approving Case PUD-85-09 was entered and adopted as motioned.

2. APPROVAL OF MINUTES (Continued from earlier in the meeting)

b. November 12, 2008

Commissioner Fox requested that consideration of the November 12, 2008 be continued.

Chair Blank discussed the procedure for when minutes are delayed versus approving them and allowing staff to make minor corrections after listening to the tape. He noted that he did not have any changes.

Commissioner Narum said the minutes were very well done, but she had a minor correction on the last line of the first paragraph on page 10 and requested that the word "has" be deleted.

Ms. Decker noted that the Commissioner's Handbook states that any Commissioner may continue an item (not subject to a legally or City-imposed deadline) to the next Commission meeting or to another date agreeable to the majority of the Commission, and an agenda item may be continued only once using this procedure.

Chair Blank stated that it appears the Minutes can be continued as an agenda item but noted that both Minutes are under a single agenda item, "Approval of Minutes."

He inquired whether the Minutes could be continued and/or whether it imposes a City-imposed deadline.

Mr. Dolan indicated that the Minutes included the proceedings for the Tri-Valley Martial Arts Academy hearing, which has been appealed to the City Council and is scheduled to be heard on January 6, 2009, which is prior to the next Planning Commission meeting.

Ms. Seto stated that this did not impose a deadline, and the Commission can always split the Minutes by separate action.

Chair Blank indicated that the November 12, 2008 Minutes would be continued to January 14, 2009. He inquired if the Minutes could be marked "Draft" and forwarded to the City Council as such, and the Commission will consider them at the next meeting.

Chair Blank noted it was after 11:00 p.m. and he inquired if the Commission wished to begin hearing new items. Ms. Decker recommended the Commission open the public hearing for Item 6.e. PAP-130, Phil Blank and Anne Fox, Appellants (PDRW-13, Katie Belmonte/Complete Wireless Consulting, Applicant), and then continue the item to a future meeting.

Ms. Seto stated that it was mandatory for the Commission to open the public hearing and take public testimony due to the 40-day requirement to hear appeals. Chair Blank recommended that in the future, staff schedule such items to be heard first on the agenda.

c. PUD-77, Dutra Trust

Application for a Planned Unit Development (PUD) development plan approval to subdivide a ten-acre site located at 1053 Happy Valley Road into five single-family residential lots and one open space parcel. Zoning for the property is PUD-SRDR/OS (Planned Unit Development – Semi- Rural Density Residential/Open Space) District

Also consider the Negative Declaration prepared for the project.

The majority of the Commissioners did not wish to hear the matter at this time and agreed not to deliberate on it as outlined in the Commission Members Handbook.

Commissioner Narum requested staff to ensure that all continued items are agendaized and heard on January 14, 2009.

d. **PUD-75/PSPA-3, Robert Wentworth**

Work Session to consider an amendment to the Happy Valley Specific Plan to rezone an approximately 6.13-acre parcel from the PUD-SRDR (Planned Unit Development – Semi-Rural Density Residential) District to the PUD-LDR (Planned Unit Development – Low Density Residential) District and for a development plan for six single-family residential parcels at 1157 Happy Valley Road.

This item was continued to January 14, 2009.

e. **PAP-130, Phil Blank and Anne Fox, Appellants (PDRW-13, Katie Belmonte/Complete Wireless Consulting, Applicant)**

Appeal of the Zoning Administrator's approval of a design review to install a wireless communication facility that includes rooftop equipment with screening and three building-mounted antennas at 7050 Johnson Drive. Zoning for the property is PUD-I/C-O (Planned Unit Development – Industrial/Commercial-Office) District.

Chair Blank advised that there would be no staff report and that testimony would be taken.

THE PUBLIC HEARING WAS OPENED.

Kate Belmonte, Verizon Wireless, stated that they are proposing to co-locate on an existing wireless T-Mobile and Sprint rooftop site at the Hilton Hotel and that they plan to mount a total of nine antennas to the exterior of the existing building which would mimic those already located there. She indicated that they have worked to abide by all requirements by proposing a co-location site and have minimized visual impacts. She requested further information as to what issues the Planning Commission has regarding the appeal and stated that she looks forward to working with the City for an expeditious resolution. She indicated that the project is of utmost importance to Verizon as there is not adequate coverage for the I-580/I-680 interchange, which is subject to high call volumes. She stated that their original location was at 6363 Clark Avenue in Dublin, which is no longer in service.

The Commission continued the item to January 14, 2009, with the public hearing to remain open.

7. MATTERS INITIATED BY COMMISSION MEMBERS

- a. Discussion of types of projects to be placed on the Consent Calendar.

No discussion was held or action taken.

Sprinkler Ordinance

Chair Blank noted there was a rather large fire this week on West Angela Street and that the week before, there was a fire in a home on Regency Drive which started in a closet and was put out by the fire sprinkler, saving a \$2 million home. He encouraged staff to move forward with a City sprinkler ordinance and noted that the City of Livermore has a very comprehensive ordinance in place.

8. MATTERS FOR COMMISSION'S REVIEW/ACTION

a. Future Planning Calendar

No discussion was held or action taken.

b. Actions of the City Council

No discussion was held or action taken.

c. Actions of the Zoning Administrator

No discussion was held or action taken.

e. Adoption of Planning Commission Schedule of Meeting Dates for 2009

Ms. Decker noted the 2009 Calendar, included in the packet, required the Commission's approval.

Commissioner Narum suggested that it might make sense to put a placeholder for an extra meeting halfway through the year, stating that the Commission will be lucky if it heard the three continued items at the next meeting. Chair Blank stated that the Commission and staff had previously discussed scheduling a special meeting once per quarter throughout the year so that this would ensure items would be addressed.

Ms. Decker indicated that staff can follow-up and determine when the Council Chamber would be available. She stated that in the past, the direction has been to not schedule additional meetings per quarter because it was felt the current schedule would be adequate. She noted that the Director could address this matter in consideration of different procedures that may take place after January 1st. Chair Blank stated that the Commission has, in 2008, held more special meetings than ever before. Commissioner O'Connor noted that Staples Ranch, the General Plan, and other items would have to be addressed in 2009.

**Commissioner Narum moved to adopt the 2009 Calendar and to direct staff to review scheduling one Special Meeting per quarter.
Commissioner Pearce seconded the motion.**

ROLL CALL VOTE:

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

d. Appointment of Two Commissioners to the Heritage Tree Board of Appeals for 2009-2010

The Commissioners suggested that no action be taken due to the absence of Commissioners Fox and Olson.

Appointment of 2009 Planning Commission Chair and Vice Chair

Ms. Decker stated that this item is not listed on the agenda and has not necessarily been so in the past. She noted that this was the last meeting of the year, and the Commission should vote on the Chair and Vice Chair for 2009 so that the new Chair would be seated by the next regular meeting on January 14, 2009.

Commissioner Narum inquired if this item did not need to be agendaized. Ms. Decker replied that she checked last year's agenda, and it was not agendaized. She added that it could be agendaized in the future.

Chair Blank thanked the Commission and staff for a great year.

The Commissioners commended Chair Blank and thanked him for a job well done.

**Commissioner Narum nominated Commissioner Pearce as Chair.
Commissioner O'Connor seconded the motion.**

ROLL CALL VOTE:

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

**Chair Blank nominated Commissioner Olson as Vice-Chair.
Commissioner Narum seconded the motion.**

ROLL CALL VOTE:

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

NOES: None.

ABSTAIN: None.

RECUSED: None.

ABSENT: Commissioners Fox and Olson.

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

No discussion was held or action taken.

12. ADJOURNMENT

Chair Blank adjourned the Planning Commission meeting at 11:20 p.m.

Respectfully,

DONNA DECKER
Secretary