



PLANNING COMMISSION MINUTES

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

APPROVED

Wednesday, November 12, 2008

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

CALL TO ORDER

The Planning Commission meeting of November 12, 2008, was called to order at 7:00 p.m. by Chair Blank.

PLEDGE OF ALLEGIANCE

1. ROLL CALL

Staff Members Present: Brian Dolan, Director of Planning and Community Development; Donna Decker, Principal Planner; Janice Stern, Principal Planner; Larissa Seto, Assistant City Attorney; Mike Tassano, City Traffic Engineer; George Thomas, Chief Building Official; Jim Kelcourse, City Engineer; and Maria L. Hoey, Recording Secretary

Commissioners Present: Commissioners Phil Blank, Anne Fox, Kathy Narum, Greg O'Connor, and Arne Olson

Commissioners Absent: Commissioner Jennifer Pearce

2. APPROVAL OF MINUTES

a. October 22, 2008

Commissioner Olson noted that the Role Call Vote on page 10 shows that he both voted and was absent. He added that he did vote and requested that this be corrected.

Commissioner Narum moved to approve the Minutes of October 22, 2008, as amended.

Commissioner Olson seconded the motion.

ROLL CALL VOTE:

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

NOES: None.

ABSTAIN: Commissioner Fox.

RECUSED: None.

ABSENT: Commissioner Pearce.

The motion passed, and the Minutes of November 12, 2008 were approved, as amended.

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

There were no speakers.

4. REVISIONS AND OMISSIONS TO THE AGENDA

Donna Decker advised that Item 6.d., PCUP-224, Little Ivy League School, was continued by staff to the December 10, 2008 meeting.

5. CONSENT CALENDAR

There were no items for discussion.

6. PUBLIC HEARINGS AND OTHER MATTERS

a. Input on the Draft Environmental Impact Report (DEIR) for the General Plan Update

To provide an opportunity for public comment from the Planning Commission on the Draft Environmental Impact Report on the Draft General Plan.

Janice Stern noted that the comment period for Draft EIR has been extended to December 5, 2008.

THE PUBLIC HEARING WAS OPENED.

There were no speakers.

THE PUBLIC HEARING WAS CLOSED.

b. Review and Consideration of the Draft General Plan

To provide an opportunity to review the Draft General Plan and provide comment.

Chair Blank noted that Measures PP and QQ had proposed specific language amendments and inquired if staff was working on those amendments.

Ms. Seto replied that since voters have approved both Measures PP and QQ, the City Council will approve the results of the Election at the December meeting and both measures would take effect ten days thereafter. She added that because the Measures would be amending the General Plan, the restrictions of Measures PP and QQ would be taken into account and the language from both measures incorporated into the General Plan.

THE PUBLIC HEARING WAS OPENED.

There were no speakers.

THE PUBLIC HEARING WAS CLOSED.

Chair Blank thanked Ms. Stern for her work on the Draft EIR and Draft General Plan.

c. PCUP-229, John Pfund, Tri-Valley Martial Arts Academy

Application for a conditional use permit to allow the operation of the following at 1262 Quarry Lane, Suite A, in the Valley Business Park: (1) a martial arts/childcare facility, Monday through Friday, from 11:30 a.m. to 6:15 p.m.; (2) full-time childcare program camps during school breaks and holidays; and (3) evening martial arts classes, Monday through Friday, from 6:45 p.m. to 9:00 p.m. Zoning for the property is PUD-I (Planned Unit Development – Industrial) District.

Ms. Amos presented the staff report and noted that a project timeline dating back to June 2007 was before the Commission. She then described the background, scope, and key elements of the project.

Commissioner Fox inquired where the car parts business was located, and Ms. Amos replied that this was located in a separate building and pointed it out on the displayed map. She noted that Suite A is where the applicant is planning to locate; a potential tenant will locate in Suite B, but staff is not aware of that use at this time; Liquid Coating is operating in Suite C, and Novine Company is operating in Suite D.

Commissioner Fox noted that the attachment to Question No. 97 lists the businesses on Quarry Lane and has After Market Distributing in Suite C, and Liquid Coating in Suite D. She stated that she believes Suite C is actually the car parts business.

Ms. Amos agreed with Commissioner Fox and acknowledged staff's error.

In response to Commissioner Fox's inquiry if the car parts business doing the lacquer process was in Suite C, Ms. Amos replied that they do conduct lacquer applications. She noted that there is a car operations center located in the building across from it.

Ms. Amos then discussed the applicant's operations and transportation services. She added that there were questions submitted by Commissioner Fox, which she read out loud as follows:

- "1. Regarding the handgun referred to in the Dublin letter; can the police follow up on whether it was loaded or unloaded?
- "2. Regarding the location of the handgun, can the police follow up on whether it was locked or unlocked?
- "3. Regarding the location of the handgun, can the police follow up on whether it was out in the open or not?"

Ms. Amos responded to questions, stating that the information is not available to the public and that the applicant would be able to respond and clarify.

Commissioner O' Connor inquired if staff asked Dublin directly, and Ms. Amos replied that the information was not available for public review. Commissioner O'Connor inquired why Dublin would not simply answer the question and asked if this was privileged information. Ms. Amos replied that staff had posed these questions, and Dublin indicated that all information that can be released has already been provided to staff through correspondence.

Commissioner Fox asked if this was the reason the questions were included in the packet, stating she had asked them back on October 17th. Ms. Amos said no but that this was what Dublin responded to.

Ms. Amos noted that Commissioner Fox had additional questions regarding responses found in the pumpkin-orange-colored book. She stated that the first question requested clarification on Question 27, 89, and 91 regarding if the childcare facility was an E-occupancy building. Ms. Amos clarified that it is an E-occupancy building, based upon the change in use to childcare.

Ms. Amos continued that the next question was: "The Building and Professions Code require that a change of occupancy type have architect- or engineer-approved plans. Since the occupancy is changing from B to E (per the staff report, it is an E), where are the plans signed by the architect since state law requires that anytime an occupancy type is changed, it requires signed plans. I've asked this question before. This is a state requirement beyond the city's requirements." Ms. Amos stated that while this is a requirement, it is one that is required by the Building and Safety Division and not in

order to secure planning entitlements. She noted that this will be required at the time the applicant applies for Building and Safety Division permits.

Ms. Amos stated that the next question relates to Question 18: "I don't see the answer to Question 18 in the packet regarding how the temperature requirement inside to be between 68 and 85 degrees in Title 22 meshes with the open loading dock door issue. Your response references responses to No. 14 but I don't see anything addressed there in the response to No. 14. Please send me the State's response or point out where it is if I am missing it. Please ask CCLD in writing if this was not asked." Ms. Amos stated that the applicant will maintain the temperature between 68 and 85 degrees when it is required through the existing air-conditioning and heating unit, such that even if the roll-up door is open in the winter, the heating will be running to maintain a constant temperature, as required by the State. Ms. Amos indicated that State Licensing has verbally conveyed to staff that this is fine because the door is only open periodically and will not drop the temperature too much and the applicant is maintaining it through those requirements. Ms. Amos added that Title 22 is enforced by the State and not the local government.

Regarding the next question: "I don't see responses to No. 19 which relates to the Title 22 requirements that rooms with kitchen/food preparation not have children present. The site plan is still labeled 'Kitchen/Study Room.'" Ms. Amos stated that although the room is labeled such, it is not a kitchen per se because it has only a sink and refrigerator and no cooking equipment or stoves. She added that State Licensing has found that it is fine for the children to be in that center since it includes just a sink and refrigerator.

With respect to the next question: "For the Disaster Plan, I don't see a letter from the city granting permission for the temporary relocation to the Public Library or Orloff Park. Where is it?" Ms. Amos stated that no permit is required in the event of an emergency to provide a safe haven for a business, patrons, adults, or children who may exit into or use City properties, such as the library or parks.

Commissioner Fox stated that she asked this question because the Child Care Licensing Application asks for a Disaster Plan, including two places to be in case of a disaster. She added that it requests, in parentheses, that the property owner submit a letter indicating the two places cited for the Disaster Plan. Ms. Amos replied that was correct and that the State did acknowledge this. She added that for City facilities, such as a park or the public library, the State requires that there be a disclosure that parents need to be aware of simply where their children will be in the event of a disaster.

Regarding the next question: "I asked the city previously whether the city inspects the sandbox daily at Orloff Park per Title 22 (Sandboxes shall be inspected daily and kept free of foreign materials). The response related to weekly and references CPSC recommendations. Can the city please address the question as it relates to Title 22 requirements (daily) not CPSC recommendations?" Ms. Amos replied that the City

does not inspect the sandboxes on a daily basis and reiterated that Title 22 is governed by the State and not by local jurisdictions.

The last question was: "Karate Tournament – page 62 in response to question No. 105 indicates that the applicant states the karate tournament did not take place. However, this web link http://www.ajif.org/kiaiecho/2008b_Spring/Spring08-lr.pdf after the fact that it did take place, but it was on the 20th. Did it take place at 1262 Quarry Lane on the 20th?" Ms. Amos replied that staff defaulted to the applicant, who indicated that it was not held on this date. She noted that the website information referenced the Tri-Valley Martial Arts on January 20th, but it is not clear whether or not it was held at 1262 Quarry Lane as there was no address or location specifically pointed out in that documentation. She stated that the applicant can speak to this.

Commissioner Fox referred to the pictures of the bus on page 22a, stating a letter was sent to the applicant in Dublin stating that he needed to move a non-operational vehicle. She noted that the response to that question indicates that January 24th was when the bus caught fire; however, the pictures actually taken of the bus after the fire has a stamp of January 16, 2004. She inquired if the bus incident happened on the 16th or on the 24th and if the City of Pleasanton received more details about it.

Ms. Amos replied that the Code Enforcement Officer for the City of Dublin did go out there on January 2nd, prior to the bus being set on fire, and informed the applicant that the bus needed to be moved. She stated that the City of Dublin indicated that the applicant stated there was a transient living in the bus who was not a relation to Mr. Pfund. She added that after the transient was told he could not live in that bus, the bus was set on fire on January 16th.

In response to Commissioner Fox's inquiry if the transient was living in the bus during the day and nighttime, Ms. Amos replied that staff is unaware of when the transient was living in the bus. Commissioner Fox inquired if this was the bus that transported children to and from the school sites. Ms. Amos deferred to the applicant to respond to this query.

Commissioner Narum noted references to Tri-Valley Martial Arts Academy (TVMAA) and the A-Plus After School Program and inquired if these were one and the same program or two different programs. She further asked if it was TVMAA that has applied for a daycare license. Ms. Amos replied that Tri-Valley Martial Arts Academy (TVMAA) is the business and that A-Plus After School Program is a program within that business. She confirmed that TVMAA was applying for the daycare license.

Commissioner Narum referred to the daycare license and said that she saw a condition stating that the business license and daycare license must be obtained within one year of approval. She inquired if this was correct, and Ms. Amos confirmed that it was.

Commissioner Narum inquired if, in order to obtain the initial daycare license, the background check would have to be completed and deemed satisfactory. Ms. Amos

said yes and noted that the applicant must comply with all of the State requirements, which includes a background check.

Commissioner Fox indicated that the State has given the City a certification regarding Director requirements and has faxed her a document stating that three units of administration are needed as well as three units or 60 training hours in early childhood education (ECE), child development, or school-aged child classes. She noted that there is correspondence in the pumpkin-orange book where Ms. Bothwell is responding that she told Commissioner Fox the applicant had ECE credits, but she was mistaken because she was looking at someone else's application. She asked whether or not the applicant requires three units of ECE credits. Ms. Amos replied that he may require those credits, which are required by the State.

In response to Commissioner Fox's inquiry if the childcare license was contingent upon the applicant getting the ECE credits, Ms. Amos replied that he must meet all State requirements, which includes the childcare license.

Commissioner Fox inquired if the City could grant the applicant a temporary conditional use permit if the State issues him a license on a temporary basis.

Ms. Seto replied that this could be the case because one of the conditions requires him to have the proper daycare license.

THE PUBLIC HEARING WAS OPENED.

John Pfund, Tri-Valley Martial Arts Academy, stated that he feels like a victim in the Spanish Inquisition. He indicated that he knows the Commission wants to effect change and asked the Commissioners why they are Commission members as opposed to doing anything else. He stated that he has a dream that he is presenting to the Commission and requested the Commission to let common sense prevail and give him a fair shake.

Mr. Pfund stated that he would first address the issue of guns. He noted that in his training program for adults, jujitsu instruction is very highly recommended in his community. He added that he always gets a fair number of law enforcement officers who come to him for training, and as part of being a law enforcement, federal, or military officer, it is important that they receive correct defenses in the event that someone points a gun at them. He indicated that he uses rubber guns with no functioning parts and has never used live firearms in training. He noted that these guns are molded plastic rubber and are the same guns used by law enforcement and other martial arts schools for training. He requested that the condition on the use of rubber training guns be permitted in the adult classes of his program.

Mr. Pfund noted that the last time he was before the Commission, the Commissioners all agreed that he had a great program, but they were looking for something else because of the hours he had in his exemption. He noted that he has taken all of the steps to get a daycare license and that he has been approved by State Department of

Community Care Licensing (CCL) to be a Director. He added that his facility has also been inspected and was found to meet the standards of daycare licensing. He noted, however, that upon completing this process, his building becomes an E-Class building as opposed to a B-Class, and changing it to an E-Class building would be fairly expensive and would drive him out of business because he cannot afford it.

Mr. Pfund stated that he listened to the podcast from the October 29, 2008 Planning Commission meeting, and one of the items considered was a tutorial facility. He noted that at that meeting, the Commissioners acknowledged that they did not fully understand the Title 22 CCL standards when they requested staff to have a State Licensing representative come and speak to them to provide a better understanding of the State Licensing requirements. He added that the Commissioners indicated that they were aware that many businesses have exemption letters from Ms. Barbara Bobincheck of State Licensing and that the Commission has approved four of them. He stated that the Tri-Valley YMCA programs that are on Pleasanton school sites, which operate entire after-school programs, are also exempt from licensing and are not daycare or childcare facilities. He noted that the Commission does not realize this because the City does not regulate them.

Mr. Pfund noted that at the October 29th meeting, Commissioner Pearce was very concerned about the 12-15-hour requirements set by the State to get an exception. He stated that he knows that all these rules and regulations are in place because the State does not want people or facilities to be able to run a private school for children during the day instead of the children going to a regular school.

Mr. Pfund further noted that at that same meeting, Commissioner Pearce stated that the Commission approved that tutoring facility because the facility has a letter from CCL, which exempts it from licensing. He also pointed out that Ms. Decker stated that the City relies on the expertise of the State in determining whether or not a facility is licensed as the State has the authority to determine that.

Mr. Pfund stated that he had presented a letter to the Commission from Ms. Bobincheck, whom the Commission has acknowledged is the person in charge from State Licensing and that the Commission relies on the State's expertise. He noted that the letter talks about a private recreational facility, which is another exemption that exists in the State, explaining that the main difference is that in order to achieve this exemption, one must operate for more than 15 hours and for less than 12 weeks at a time. He stated that Ms. Bobincheck granted him this exemption because she acknowledges that he is not running a private school but an after-school program for children during certain hours of the day.

Mr. Pfund stated that he is at the tail end of applying for his daycare license, which he believes he will get in possibly two to three months. He noted that his landlord has been considerate but that he has told Mr. Pfund that he [Mr. Pfund] must make a decision by December as to whether or not he will stay on the site and pay the full rent or leave. Mr. Pfund indicated that he cannot wait for the daycare license and requested

the Commission to allow him to operate his business based upon his exemption until such time as he obtains his daycare license. He indicated that he is willing to have the Commission condition his program to be open only for 16 hours or less per week. He stated that kindergarteners in Pleasanton are out of school at 11:30 a.m., and he will not need to pick them up. He noted that there are four other existing facilities in Pleasanton, having the same program as his and having approvals using an exemption like his that pick up kindergarteners at 11:30 a.m.

Mr. Pfund reiterated that this is his dream and that he has done this for 30 years. He stated that he knows the Commission wants to do the right thing and requested the Commissioners to think back to a time where something was insurmountable but they did not give up and in the end, they got what they wanted.

Commissioner Narum asked Mr. Pfund what requirements he was missing and what kind of timeframe he has been told regarding when he would get his daycare license. Mr. Pfund replied that he has completed all of the requirements except the background check, which he submitted back in April of 2008. He noted that he has no convictions so he should be able to get his background clearance. He added that he has completed his fingerprint Live-scan process and that he calls them every other week, but they cannot tell him when the process will be completed. He stated that his files were initially misplaced and had to be tracked down, but everything will be completed and will be ready to go.

Chair Blank asked Mr. Pfund if he has completed the three semester units. Mr. Pfund replied that he has completed all the requirements except the three ECE units, which the State allows to be completed within one year from the date of application.

In response to Chair Blank's inquiry if the only thing pending is the background check portion, Mr. Pfund confirmed that was the case.

Commissioner Fox stated that she thought the background check was supposed to be completed in August and that the project was not going to come before the Commission until it was completed. Mr. Dolan stated that he did not recall a conversation where staff committed to wait until the background check was completed. He noted that staff knew Mr. Pfund had applied for the background check and assumed it would be granted; he did not recall committing to wait on it, as it appeared to be a routine process.

Commissioner Fox referred to timing and asked if Mr. Dolan was aware that Mr. Pfund would come to the Commission and would ask to reconsider him as a private recreation facility. Mr. Dolan replied that he was not aware Mr. Pfund would specifically do this. He stated that staff met with Mr. Pfund last week and discussed the potential additional requirements relating to the occupancy, which Mr. Pfund indicated he had some significant concerns regarding his ability to do this. He added that since that time, there have been conversations with the Building and Safety Division about how to address this specific issue and there has been the possibility that the solution is not necessarily

that expensive. Mr. Dolan stated that from his interpretation of Mr. Pfund's comments tonight, Mr. Pfund appears to be concerned about time.

Commissioner Narum noted that she found it interesting that the project packet makes no mention of the background check. Mr. Dolan stated that there is a condition that states that City approval is contingent on Mr. Pfund getting a daycare license. He noted that there would be no issue if Mr. Pfund does not get his childcare license because he does not have a completed background check clearing him to be licensed.

Commissioner Narum noted that if the Commission were to approve this, it sets in motion steps dealing with the occupancy and getting the business permit, which is conditional on getting the daycare license; therefore, there are checks and balances to get all the necessary steps, including the background check. She added that this would allow Mr. Pfund time to determine what it would take to satisfy the E-Class occupancy.

Mr. Dolan confirmed Commissioner Narum's observation and stated that as soon as Mr. Pfund was able to address the building issue and has a license in hand, the City approval would take effect.

Commissioner Olson stated that it strikes him that there is a time issue here and it does not go unnoticed that part of reason for the time issue is the fact that this application has been dragged out for months. He noted that he did not think this was totally the applicant's fault. He suggested that the Commission take the same approach as that of the State and grant a conditional, partial approval, pending the background check; and if this is not achieved, the State would then revoke his license, and the City approval would be revoked as well. He noted that Mr. Pfund can then move forward until he is able to finally satisfy the State's requirements. Commissioner Olson stated that he did not want this to be open-ended and asked Mr. Pfund what kind of timeframe he would be comfortable with.

Mr. Pfund replied that the academic sheet, which is separate from the other requirements, certifies that he meets the requirements for site Director, which does not necessarily mean that he must show the State that he has a clear background. He stated that if he were to hire an employee for his daycare center, the State does not require him to show that the employee's background check has been done; however, when the State makes surprise inspections in the centers, the State inspector will have the operators pull every record and analyze them on site. He noted that the inspector has the right to take the children into another room and privately interview them about the site operations. He indicated that it is at this time that the operator must show the State that he has a license.

Mr. Pfund continued that if the Commission conditionally approves him to operate for a certain amount of time using this exemption, it is his intention to get the daycare licensing and proceed with the process. He indicated that if the Commission does not grant him approval, he will be out of business because he cannot come up with the rent to pay his landlord in December.

Mr. Pfund stated that he was not certain how long it would take to complete the background check. He explained that the reason there is a lot of information from Dublin is because a student who was in his academy in 2002 accused him in 2004 of molesting him. Mr. Pfund stated that he was arrested, put through two years of pressure, and in 2006, with his eyewitnesses, polygraph test, and psychological examination demonstrating to the court that he has no characteristics of a pedophile, the District Attorney dismissed his case and it never went to trial. He stated that he was cleared, has had no convictions, and has had no run-ins with the law. He added that he does not drink and he is a role model; he has done martial arts for 30 years, and his teachings make him a strong role model. He noted, however, that the arrest hangs on his record and it is serious. He stated that his background check should be granted because there is nothing on his record, but because of the arrest, the matter is being investigated thoroughly, eyewitnesses are being called, and records are being checked, after which it will go back to the supervisor, who is trying to expedite his case. He indicated that the supervisor could not provide him with an answer as to how long the investigation will take.

Mr. Pfund stated that Suzanne Bothwell, Barbara Bobincheck, and Fred Gill who is the manager of the entire Bay Area, all know about the arrest and what Trust Line, the background check processor, is doing, and they still have granted him approval.

Commissioner Olson stated that from his point of view, he felt there is need to put a time limit on any kind of conditional approval. Mr. Pfund stated that summer starts in six months, which should allow for enough time to process the background check. He requested six months to run his after-school program and get some business.

Commissioner Fox referred to the E occupancy, stating it would require a two-hour fire-rated wall between the existing and the adjoining tenant spaces, as well as a supplemental fire sprinkler system. Mr. Dolan stated that there are some subtle differences and noted that Mr. George Thomas, Chief Building Official, would address these.

Commissioner Fox inquired what the timeframe is when plans would need to be submitted to the Building Division for tenant improvements for an E-Class occupancy. She further inquired how the skylight would affect the ability to put additional sprinklers in.

Mr. Thomas stated that the building code allows a variety of options for complying with an E-Class occupancy and that an E occupancy does not trigger the need for fire sprinklers. He noted that the entire building is less than 14,500 square feet, which is the maximum area the Building Code allows for an E occupancy within a non-sprinklered building. With respect to the two-hour fire wall, Mr. Thomas noted that under the prior Building Code, the requirement was a one-hour fire separation wall; the new 2007 California Building Code is more restrictive and requires a two-hour fire wall. He noted that the building has an existing one-hour fire wall in place.

Mr. Thomas stated that there are additional options in the new Code. He indicated that one of these alternatives is a non-separated use, in which the entire building rather than just the project site is evaluated for an E occupancy and providing the most restrictive requirements of that particular occupancy throughout the building; this would not require upgrading the fire rating wall to two hours. Mr. Thomas added that there are exiting requirements and that he has reviewed these with Mr. Pfund and the building owner.

With respect to how long it would take the Building and Safety Division to approve the building for E-occupancy, Mr. Thomas stated that Mr. Pfund would have to submit drawings prepared by a California licensed architect or engineer. The City has the ability to expedite a review within a three-to-four-week period, if requested by an applicant, for an additional fee.

Commissioner Fox inquired if the Units A, B, C, and D would need to be upgraded or just Unit A. Mr. Thomas replied that the methodology is that if the wall is not going to be changed to a two-hour wall by adding another 5/8-inch sheetrock on both sides, then the entire building would need to be evaluated for occupancy. He noted that the real ramifications would only be to provide a manual and an automatic pulsations throughout the entire building, which requires running wiring.

Commissioner Fox inquired whether the guns referred to in the Dublin memo were loaded or unloaded and if they were the mock guns used in training. Mr. Pfund replied the guns were unloaded, locked, and totally out of view. He stated that he had to bring the guns in because he had a Saturday morning class and no children were present. He noted that when he was asked by the police officers if he had any firearms on-site, he complied and pointed out to the police officers where the guns were located because they were out of reach.

Commissioner Fox noted that the California State Licensing has a requirement that firearms and other weapons shall not be allowed or stored on the premises of a childcare center. She inquired if mock weapons and mock knives were considered firearms or other weapons.

Ms. Seto replied that she did not know if there was a specific regulation for that but that she could check with the State.

Commissioner Fox inquired if the State had been asked about whether or not mock weapons are allowed. Ms. Seto replied that this question has not been posed.

Mr. Pfund stated that he posed that question of the State, and the State Licensing representative indicated that when he obtains his childcare license, the facility would be a childcare center during the day, which would be different and separated from the evening adult classes. He indicated that he informed the State about the mock weapons he is using, which were made of rubber, have no machinery, and cannot fire,

and the State was fine with that. Commissioner Fox inquired if the State's response was in writing; Mr. Pfund said he did not have them in writing.

Commissioner O'Connor inquired if it was Mr. Pfund's understanding that the background check submitted in April was still being conducted and said he was baffled why it would be taking so long. Mr. Pfund replied that there was first a delay in getting started because it was at the beginning of a new school year when he applied for the license, and there were many people needing licenses across the State. He added that Trust Line is also doing background checks for nannies and other positions. He stated that his file was then misplaced, which further delayed the process.

James Baker stated that he has known John Pfund for seven years and thanked Commissioner Olson for acknowledging how long the matter has dragged on. He noted that Mr. Pfund has spent all of his operating capital and that he was involved in the entire accusation case against Mr. Pfund.

Mr. Baker stated that he came to know Mr. Pfund when his 2nd grade daughter was enrolled in his program for three years. He noted that it is an amazing program, which should be facilitated by the City. He indicated that there are numerous people operating after-school camps for all kinds of activities, including a little time to do homework but with the core focus on recreational activities. Mr. Baker stated that when he started investigating this in 2000, the American Society of Pediatrics had an article stating that martial arts actually improves grades. He continued that he noticed a superman complex; the students would put on their uniform and were respectful, there was no bullying, there was a hierarchy, and they learn humility. He said there was a waiting list of students to sign up because the grades of the children enrolled in the program went up. He added that after six months, he signed up for the adult classes, and he has been a student ever since.

Mr. Baker noted that this is a wonderful thing for children, and the community benefits from the program. He encouraged the City Council to facilitate this and understood that while the City would be concerned with the building and safety issues of parking and fire, the State has the overriding responsibility of monitoring it, and it is tightly reined on this. He noted that the State is familiar with after-school camps and knows what it takes to keep children safe. He asked the Commission to allow Mr. Pfund to operate and have the State take over.

Jeff Nibert stated that he has known Mr. Pfund for 12 years. He stated that his son has gone through this program during that time, starting in a junior level program, and got his black belt recently all because of Mr. Pfund's model. He noted that he has seen successes with other kids, teenagers, and adults and has nothing but the highest praise for Mr. Pfund. He stated that Mr. Pfund is a strong role model and asked the Commission to let fairness and common sense prevail in its consideration of his application. He indicated that he has been attending the sessions on this application and has seen how this has been strung out for months. He stated that Mr. Pfund has

agreed to the many conditions that have been imposed and that staff has recommended approval of the conditional use permit.

Mr. Nibert stated that time is of the utmost importance as Mr. Pfund will be out of business if a permit is not granted expeditiously. He noted that the Commission has asked many questions and that it was time to put an end to it and allow him to operate.

Tim Nibert stated that he has studied with Mr. Pfund for ten years and that he used to teach children's classes and believes the community needs this program. He noted that he has watched children grow and gain lots of confidence. He stated that he believed the entire community would benefit from the Commission allowing John to operate.

Jack Balch, property owner, said he was starting to know the Commission members personally. He thanked staff for putting a lot of time into this application and stated that he respected staff's opinions and work ethic.

Mr. Balch stated that Mr. Pfund is renting only 2,912 square feet out of a 9,936-square-foot building that he owns. He noted that Mr. Pfund has been at this for about a year and must figure out what to do because with no late fees, Mr. Pfund owes him \$39,000. He stated that he advised Mr. Pfund before signing his lease that he should get a conditional use permit, which he did receive, and with that belief, he signed his lease in good faith. He indicated that Mr. Pfund has a 23-page lease that details the use of his space and specifically restricts certain things that have come up several times; such as the storing of non-operational vehicles. He commented that he was not sure why a bus in 2004 in the City of Dublin was of any concern for this conditional use permit, and he finds it appalling that it is being addressed four years later. He noted that it is out of staff's normal and reasonable scope of responsibility to know who set the fire or who was in the bus at the time. He noted that the lease does not allow Mr. Pfund to abandon vehicles on the premises and that any non-operational vehicle on the site would be towed immediately. He added that Mr. Pfund is also not allowed to store trash, which must be stored in a trash enclosure, and requested that that condition be modified. He stated that Mr. Pfund must maintain all facilities and comply with all State and Federal laws.

Regarding specific conditions recommended by staff, Mr. Balch requested that three conditions be amended: (1) Condition No. 9, parent/guardian consent awareness of the lacquering process next door. He noted that "Carl's Custom Cabinet" is doing business in an adjacent premise, and "After Market Distributing" operates as a lacquering company. He noted that if either of the tenants moved out, Mr. Pfund would still be required to comply with a condition that would no longer be relevant. (2) Condition No. 13, outside storage. He noted that the City actually requires that a trash enclosure be installed with a dumpster in it. (3) Condition No. 15, signage. He noted that Valley Business Park has an approved sign program, and tenant signs do not require individual City permits if the signs are within terms of that program.

With respect to other elements, Mr. Balch stated that staff has conducted a lot of research and noted the answer to Question 14 in relation to Commissioner Fox: "My supervisor is finding it difficult to accept the time I've spent explaining our job responsibilities from an individual who has some other agenda, especially since other parties except one besides John, have no problems getting exemptions from your city. ... I have been working here for 10 years. Please understand that child safety is my highest priority and in my position as a licensing program analyst with the highest regard to the Department's commitment, the needs of the families and communities being served by this department, and parties interested in earning and maintaining child care licenses. I appreciate your interest in being informed on these issues. This department specializes in licensing centers and your department determines whether someone will be using a piece of land in accordance with the expectations of your community. Please let us do our respective jobs as expected."

Mr. Balch stated that he believes this has been a witch hunt, which is sad. He said Pleasanton is not the community of character he thought it was. He commented that Mr. Pfund has died a death of a thousand cuts and bled slowly his savings to a point where he could have just been cut off back in August when his first application was done, and he would at least have been able to move to another City without being so far in debt.

Mr. Pfund pointed out that 2004 is history and that with a fresh start, he is certain City staff will acknowledge that for the last year, he worked very hard to comply with whatever needed to be given to the City in a timely basis and that he is here to cooperate. He stated that he does not want to go to another city and pointed out that the City of Dublin never revoked his conditional use permit and had this event not occurred in 2004, he would still be there. He noted that Dublin gave him 90 days to correct some things, which were correctible. He added that the City of Dublin gave him the permission to operate under the exemption without a license, but they did not require him or his employees to complete the background check.

Mr. Pfund stated that he does not want to be a licensed day care since he is an after-school recreation program, but if he has to get a license he will. He added that he believes the only reason the Commission is wanting him to be licensed is because he went over the 16-hour limit. He requested the Commission to allow him to open for six months and to build up his clientele, and then ask him to come back and talk about whether he actually needs a childcare license or possibly have a condition could be placed on him and his employees. He indicated that he teaches his students everything they need to do so as not to be attacked by bullies or child molesters. He stated that he would never give a daycare license to someone who is a child molester, and the issue is dismissed and should not be in the room anymore. He stated that he wants to make his business work and that America was founded by people who never give up. He stated that it is unfortunate that none of the Commissioners have ever seen his program in operation. He suggested if he is allowed to operate for six months, the Commissioners should drop in on the program and look at what he does, 90 percent of which is martial arts and 10 percent is homework.

Chair Blank asked Mr. Pfund if he would have any issue about restrictions for overnight activities. Mr. Pfund replied that he would not oppose such a condition.

THE PUBLIC HEARING WAS CLOSED.

Commissioner Fox expressed appreciation for the timeline provided by staff and inquired what the City Council vote was on May 6, 2008 when a childcare license was required. Ms. Amos clarified that the Council did not require Mr. Pfund to go back to State Licensing, it simply acknowledged what the Planning Commission also believed that he had the appearance of operating a day care operation and denied the project, upholding the Planning Commission's decision by a vote of 5-0.

Commissioner Fox inquired if the Council's decision was also without prejudice as was the Planning Commission's in February. She noted that when the City Council heard it on May 6, 2008, it did not agree that it was a private facility but rather, a childcare center-like business. She inquired if the applicant has an opportunity to come back to provide proof of licensing. She stated that she believed the Commission could re-hear his application if it was a different application, with the license, and it would be noticed as a childcare center.

Ms. Amos replied that the Council upheld the Planning Commission's decision without prejudice. Chair Blank agreed.

Mr. Dolan stated that the Planning Commission would have to decide whether or not Mr. Pfund's variation on the request is different. He noted that with the six-month trial period, it would be different than what was proposed in the past. Commissioner Fox noted that said this was not included in the staff report. Mr. Dolan agreed and added that it was something Mr. Pfund brought up this evening. He indicated that he was not sure there was an issue with this modification and requested the opinion of the Assistant City Attorney.

Ms. Seto stated that she believed the Commission should look at what the current application is and to the extent that the applicant is proposing a modification for the conditional process for a short amount of time, which can be considered as a sub-part of the larger application. She noted that the Commission does not need to go back to the prior City Council action or require a new application.

Commissioner Fox referred to the issue of the Zoning Ordinance that states that if a childcare center is located in a commercial district, the outdoor play area must have a fence that separates it from truck traffic, delivery trucks, or vehicles. She inquired how City staff compares this specification with this mesh opening and loading dock. Ms. Amos replied that the zoning districts are different and that even if it were considered a straight zoning, it would be an Industrial zoning as opposed to strictly commercial. She added that the mesh fencing, as addressed in Question 3, is a solid

barrier with nothing flexible in its movement and with a height of about five feet, which makes it highly unlikely that a child would be able to go through it or climb over it.

Commissioner Fox referred to the issue regarding the businesses within Valley Business Park and the operating car business. She noted that the door needed to be kept open but would have to be closed because of odor and safety issues and inquired if staff would still support the application, or would staff require the outdoor play area which would result in the loss of four parking spaces at the rear of the building.

Ms. Amos replied that this matter was also considered. She stated that when Code Enforcement went out to investigate the odors, the business itself was surprised the smell was still there because it has a system to ventilate the odor out. She noted that staff would still support the project. She added that lacquering is done approximately three times per month and that if the door must be closed, they could adjust their times for opening the door.

In response to Chair Blank's inquiry regarding if the facility had a system that is functioning properly, Ms. Amos replied that it does.

Commissioner Fox inquired if there would need to be an air filtration system within the daycare facility. Ms. Amos said no; it would be the facility producing the odor that would be required to have it.

Commissioner Fox asked if there were other childcare centers in the City in a warehouse space with a loading dock. Ms. Amos said the only other one is located on Johnson Drive, which is in an industrial area. She added that it is a church without any outdoor play area but with a roll-up door.

Commissioner O'Connor referred to Condition No.3: "All activities shall take place inside the subject facility." He stated that the applicant talked about transporting children to parks and other recreation areas and inquired if this would need to be modified. Mr. Dolan replied that this condition only refers to the actual on-site activities and would not apply to off-site activities. He added that the purpose was to prohibit the children from playing out in the parking lot.

Commissioner Connor referred to Condition No. 13: "There shall be no outdoor storage." He inquired if this applied to garbage, and Ms. Amos said yes. She added that this addresses keeping boxes or storage items outside the facility.

In response to Chair Blank's inquiry regarding the sign issue, Ms. Amos replied that Condition No. 15 is standard language and would not preclude an applicant from moving forward with a sign design that can be submitted over the counter and checked that it meets the sign program requirements. She added that depending on the type of sign, it may require a permit from the Building and Safety Division to ensure that it is mounted properly.

Commissioner O'Connor referred to the hours of operation for elementary and middle school students and stated that he was sure the requirement for hours of operation falls under childcare versus recreation facility, which deals with the over-16-hours issue. He requested confirmation that if the kindergarten were to operate from 11:30 a.m. to 6:15 p.m., this would run into the 16-hour limit and would trigger the childcare requirement, as opposed to other hours. He requested further confirmation that if the Commission were to consider a temporary use that did not require a childcare license, some of the uses would have to be modified. Ms. Amos confirmed Commissioner O'Connor's statements.

Commissioner Olson referred to Condition No. 7 and stated that he understands fully why real guns would not be allowed in the facility but did not understand why it is being conditioned to not allow mock guns as they have been described tonight. He noted that where some of this training does apply to police officers, it was his sense that they would want to engage in the training with form factors that are of similar weight and size of real weapons.

Ms. Amos stated that staff is open to allowing this for the evening adult classes.

Commissioner O'Connor commented that this project has been dragging on for a long time and that he was not sure why it was taking the State more than seven months to complete the background check. He stated that he believes one of the Commission's responsibilities is to make sure the children of the town are protected. He indicated that he is willing to listen to other discussion regarding some type of other use but that he would not allow the entire program on a temporary basis until there is a childcare license. He stated that the Commission could look at a program that is less than 16 hours a week and that would not require a childcare license.

Commissioner Fox expressed concern about the facility regardless of how many hours it would operate. She stated that common sense dictates that a childcare facility should not be operated in a warehouse district with loading dock doors. She noted that over the last six years since she has been on the Commission, an architect comes forth with plans and applications for a building similar to the one moved from Linwood to the Hacienda Business Park, and that facility plans upgrade to a Class E facility. She stated that this is not a situation where the applicant is trying to come in and not be licensed yet continues to advertise on Craig's List as a childcare facility while talking about being a private recreation facility. She noted that Pleasanton prides itself of quality childcare facilities, and if the Commission starts waiving State requirements that are minimum requirements, such as the 75 square feet per outdoor place per child, this would no longer be a high-quality childcare facility. She indicated that she would not support a childcare facility in an attached warehouse space with a loading dock door as a substitute for an outdoor space in an industrial area. She noted that she has a problem with the co-located uses, with it not being safe with other industrial uses in the proximity, as opposed to the Quarry Lane school, which is within that area but is a detached building and self contained. She added that she would not support the area

for a childcare facility because once this is approved as a conditional use permit, it would be perpetual, and she did not believe it was an appropriate place for it.

In terms of the mesh open loading dock door, Commissioner Fox stated that she did not agree that it is safe and could not find the safety finding. She added that she was not interested in a temporary use either but that she would be interested in seeing the application brought back when the final license is granted at an appropriate location.

Commissioner Olson stated that he certainly hopes that one of the remarks made by a public speaker referring to this as a witch hunt make it into the minutes. He noted that he would not use that language but that when he saw the package on his front porch, the word "vendetta" came to mind. He stated that the Commission at this point has the responsibility to the applicant to try and reach some middle ground and do something on a temporary basis as he tried to describe it. Commissioner Olson indicated that one of the strong reasons he states this is that no one has come to any of these meetings with a negative input, including from parents who have had children in this program. He noted that all the testimony being positive says a great deal about the applicant.

Commissioner Olson indicated that he will support the project with certain conditions. He expressed agreement with the suggested six-month period. He stated that he thinks the E building discussion is a subterfuge and a way to delay that project further and that he was not in favor of that. He stated that he thinks what the City has presented tonight is a way to deal with this on a basis that would be acceptable to the applicant and at a reasonable cost to him, going back to Condition No. 17 that basically has a Fire Marshal to rule on it.

Commissioner Olson agreed that Condition No. 13 regarding a trash enclosure would need to be modified and that the matter of signage has already been discussed.

Commissioner Narum stated that she agrees with most of what Commissioner Olson has said. She noted that she was astonished when her husband carried the packet in from the front door. She stated that considering the time and effort staff put into this project and its recommendation of approval, she believes the Commission should leave the E-occupancy and Condition No. 17 to the Building and Safety Division staff. She indicated that she would like to find some common ground on a temporary basis to try to give the business a chance. She stated that she feels the project has gone on long enough and believed it was embarrassing. She noted that given what has transpired, she is amenable to something halfway on a temporary basis, but believes that as was mentioned in the earlier hearing, the facility will ultimately need a daycare license.

Chair Blank noted that this item started on June 27, 2007, and almost a year and a half later, it is still unresolved. He stated that he believes the childcare license that the Commission discussed at a previous hearing and which the City Council reinforced is a must. He added that the only way he would consider a temporary arrangement is with a condition that if, at end of a six-month period, a childcare license is not forthcoming, both long-term and short-term plans are off. He stated that he felt clearly this has taken

longer than anyone anticipated, that it poses a lot of challenges, and that a lot of people are troubled with how to rectify it and do it in a way that is safe and effective. He noted that the other part of the challenge is that childcare licensing is not the purview of the City but of the State, and if the State decides to waive every requirement to issue a license, the only thing to do is to change State law.

With respect to some of the conditions, Chair Blank stated that he was fine with allowing the orange-colored mock guns. He added that while this was not discussed, he felt Mr. Balch brought up the point that staff is requiring notification of the lacquering, and if the lacquering operators move out and a leather tanning company moves in, it would it apply to them as well. Ms. Decker stated that staff has a generic condition that states that anyone participating in the program would acknowledge that there are other industrial uses in the surrounding area. Chair Blank indicated that this would be better verbiage.

Chair Blank referred to the outdoor storage and stated that he assumed this did not include the trash enclosure. He indicated that the Commission has discussed the sign program. He added that he would like to see a condition that states that overnight stays for any period of time shall not be permitted, that there shall be no overnight camps permitted, and that no child or adult of any age, including the applicant, may be allowed to stay in the facility overnight for any reason.

Chair Blank proposed another condition that no activities may be conducted beyond the hours as noted in Condition No. 4; the facility may remain open between the transitioning to classes between the hours of 6:15 p.m. and 6:45 p.m.; there shall be a period of one-half hour allowed before and after the hours of operation as stated for patrons to leave the facility, clean up and set up.

Commissioner Fox inquired if the City would be liable if it allows Mr. Pfund to operate on a temporary basis prior to a childcare licensing and a child is injured in the facility. Ms. Seto replied that the City would generally not be liable for those business operations and activities that are being monitored by the business.

Chair Blank inquired who would reduce the hours so that the childcare licensing is not needed. Ms. Seto replied that staff is crafting language to address this, that a program that would be temporarily allowed to occupy and open would have to be modified in such a way so as to meet the exemption requirements outlined in the prior documentation in terms of the number of hours.

Commissioner Fox inquired if this meant that the hours of operation, including during school minimum days and during school breaks and holidays, would have to start at 3:00 p.m. Ms. Decker replied that staff has seen numerous programs that have come before the Commission with various hours of operation. She noted that the limitation that the Commission has acknowledged and accepted is a condition limiting the number of hours that children can attend, such that the hours of operation may be from 11:00 a.m. to 6:00 p.m.; the condition that is actually applicable is that no child can be

within that program over 16 hours per week. She added that this is the condition seen on the most recent applications.

In response to Chair Blank's inquiry if the hours get spread out, Ms. Decker said yes and added that the same is applicable even through the camps during the winter. She indicated that it is a matter of the applicant managing the schedule and monitoring how many hours each child is there.

Mr. Dolan stated that a sentence could be added at the end of Condition No. 4 that states, "Until such time as the daycare license is obtained, no student could attend more than 16 hours." Commissioner O'Connor suggested adding "students under the age of 12." Ms. Decker stated that this would only be applicable to the afternoon sessions which are shown under times for Condition No. 4 for "students aged 12 and under."

City Attorney Seto stated that it could more generally be written to say, "during this temporary period," and the program would have to be modified and the conditions modified to meet the childcare exemption criteria. She indicated that the applicant could submit the program information to staff, and staff could continue to verify this during the monitoring period.

Commissioner Fox inquired if this could be appealed to the City Council or if it would automatically go to the City Council. Ms. Seto replied that this is a conditional use permit and the Planning Commission has the final decision on this, unless it was appealed to the City Council.

Commissioner Narum inquired, should the Commission go in the direction of allowing Mr. Pfund to open with a child not being there more than 16 hours a week, if this would give the applicant time to sort through what is needed for the E-occupancy so it would be on a parallel path. Mr. Dolan replied that it would, although the applicant would not need anywhere near 6 months to address that issue. Chair Blank stated that it would be more like from four to six weeks.

Commissioner Narum inquired, if the Commission grants the use permit saying a child can be there up to 16 hours for up to six months and there is no appeal, if in theory, Mr. Pfund could open once he has his business license and any fire or building inspection he needs, but it would not be required that the building satisfy the E occupancy before he gets the business permit under this direction.

Ms. Decker said this is correct and added that Condition No. 10 would need to be modified to provide this. She stated that what staff has seen in the past when there is limitation in the number of hours creating the exemption, a condition is added that if there is modifications over and above 16 hours per week, a childcare license may be required and application needs to be made to the State. She noted that this is a standard condition on tutoring facilities and facilities with extended hours where the limitation of 16 hours is granted. She added that this would provide the opportunity for a six-month period based on exemptions seen and information from the State.

Ms. Decker noted because that the period of time the State may or may not take to grant a childcare license is not in the control of the applicant or the City, she would like the Planning Commission to consider that if the Commission were to grant a temporary permit for a six-month period, it also craft similar language that the applicant would revisit the Planning Commission after six months and provide information on his operations and monitoring, such as attendance, hours children are there, how many students are in each class, etc., as it is possible that after six months, Mr. Pfund is still undergoing the process and does not have a license.

Commissioner Fox questioned if the number of students for an E occupancy was six. Mr. Thomas replied that the commentary to the Code under E educational occupancy talks about pre-school age children age 2.5 to 5 years, which are the concern, and Mr. Pfund does not teach pre-schoolers. He explained that going from an E business occupancy to an E with smaller numbers would have to do with pre-schoolers in the concept that they need further assistance with exiting from the space. He noted that if the numbers are maintained until it changes, it would be reviewed and plan checked as an E occupancy and would not be an issue until the applicant gets enough students. He noted that having a license provides the ability to extend the 16 hours.

Commissioner Olson suggested that if this is set up on a temporary basis, a condition be crafted to say that it will be 16 hours or less until such time that Mr. Pfund obtains his childcare license, which would also trigger the E-occupancy.

Chair Blank discussed the scenario of getting a business license and childcare license as well as the triggers for E-occupancy. He stated that he believes that in order to make this work, it should be kept as simple as possible.

Commissioner Narum stated that she thinks he could have up to 20 children. Ms. Decker replied that based on the operations as described for the hours, Mr. Pfund can have up to 20 children but it is the number of hours the Commission is considering that each child can only be there up to 16 hours only. She noted that Mr. Pfund can have 20 children on site, but they may not attend more than 16 hours, which would allow Mr. Pfund a type of business and maintain these hours as identified and agreed upon with conditions.

Commissioner Narum noted that if Mr. Pfund is granted a temporary use permit through end of school year to give him time to get daycare license, and if he does not get everything together until June 1st but wants his business permit based on having a daycare license, which would trigger an E-occupancy which takes about four weeks, it would put him beyond the six-month temporary permit period. She inquired whether the Commission would want a condition for him to start figuring out how to satisfy the E-occupancy so that his six-month permit does not run out while meeting all the other things that are dependent on one another.

Chair Blank stated that if Mr. Pfund does not have his childcare license and background check by March or April, he should be going after the State and in May, he could come back to the City with all of his documentation about what he has done, and then the Commission can act on it at that time.

Commissioner Narum inquired, if the Commission gives Mr. Pfund a temporary use permit until end of June and if as soon as he gets his license, he wants to be sure he is an E occupancy, if staff would begin working to determine what needs to be done.

Mr. Thomas said yes. He stated that Mr. Pfund and the property owner have already come in to talk about what the potential requirements are for an E-occupancy and are working with an architect to do this.

Commissioner Narum asked Mr. Thomas if he would still work with Mr. Pfund, even if he has not completed his documents, to do whatever is necessary to meet the E-occupancy. Mr. Thomas said yes.

Commissioner O'Connor stated that the Commission could also consider approving this as is, under 16 hours, rather than putting a six-month time limit. Chair Blank recalled that this was the original premise before the Commission. Commissioner Olson inquired if a limit is necessary on the temporary time and if Mr. Pfund could just continue with the 16 hours if he does not have a childcare license.

Commissioner Narum stated that this was a good point and referred to Ms. Decker's comment about having some kind of review. She suggested that if the Commission does approve this in some form, the Commission review it around April 1st.

Chair Blank stated that he could not support that because the whole premise of the Commission's initial hearing and the City Council's hearing was the fact that this appears to be a childcare operation.

Commissioner Narum stated that if June 30th came and Mr. Pfund still did not have everything, and if staff checked with the State and he has done everything, but the State is still not ready, she would be open to extending the temporary timeframe, but she still believed he ultimately needs a daycare license.

Commissioner Fox inquired if students be allowed to come and go as they please in the temporary situation. Chair Blank replied that there is a condition that people would need to be signed in and out.

Ms. Decker clarified that the Commission would effectively be approving this conditional use permit but with caveats by modifying the conditions of approval to provide timing, review, and what the actual criteria would be after benchmarks of time.

Chair Blank pointed out that the Commission has had two prior Department Managers of the Planning Department tell the Commission that a conditional use permit can be

made to expire. Ms. Decker state that it can be, but she pointed out some of the actual fallibility of the expiration of six months. She noted that if the Planning Commission wants to sunset the approval, and the applicant does not have everything in, and does not revisit the Planning Commission to have some monitoring brought forward, the applicant has the opportunity to apply for modification to that permit, which can be done 30 days in advance, which may hold the process in abatement. Or, if the Commission conditions it such that it does not matter what he does and it must close and end, then the applicant would have significant investment and time and clientele built up that would cease at a date certain, where the applicant either requests modification of that permit or tries to force obtaining the background check. Ms. Decker, therefore, suggested a consideration that the Commission require Mr. Pfund to return at the end of the school year or on June 30th to see how it is going, and where he is at in terms of childcare licensing. She noted that staff has done this with various conditional use permits.

Commissioner Fox inquired if the Commission ever let a childcare center open without a childcare license. Ms. Decker replied that what is under consideration now is that the Commission ultimately wants the applicant to get a childcare license and is conditioning the project, reducing the hours, which falls under the exemptions discussed, until he has a childcare license. Ms. Decker stated that she believes she is hearing that the Commissioners would like Mr. Pfund to have a childcare license and believes the operations indicate there should be one; however, the Commission is also interested in his opening his business, and the question is what the timeframe or benchmark might be to be able to do that. She expressed concern that the State's process is out of staff's control, and if at the end of six months, he still does not have his license, instead of shutting down his business, he be provided the opportunity to modify the conditions of approval.

Chair Blank inquired how it can be ensured that the applicant stays motivated to continue his quest to obtain the childcare license as opposed to simply operating under the exemption, which caused the issue in the first place.

Ms. Decker replied that staff has done similar check-ins with large family daycare centers. She added that the Commission may wish to have Mr. Pfund re-appear before the Planning Commission after six months to check in and grant him a permit for up to nine months.

Commissioner Fox inquired what would happen if the State denies him the childcare license.

Mr. Dolan stated that the Commission can get where it is going by adding one line to two difference conditions: one is relative to reducing the hours back to the 16 hours – “Until such time as a childcare license is obtained, no student 12 or under can attend.” And for Condition No. 10, change “Prior to occupancy” to “Within ‘x’ months of approval, Tri-Valley Martial Arts shall obtain a childcare license.”

Mr. Dolan added that in terms of if Mr. Pfund is nearing the end and the State is not moving, at some point along that timeline, Mr. Pfund would need to make the decision as to whether or not this is a lost cause or whether or not he should apply for an amendment to these conditions.

Chair Blank inquired if the modification to Condition No. 10 could say that within seven months of approval, Tri-Valley Martial Arts would obtain a childcare license from the State Department of Social Services. He further inquired, if he does not obtain the childcare license and continue business under the rest of the conditions of approval, if the City could revoke the CUP on the basis that he did not obtain the childcare license. Ms. Seto said yes to both inquiries.

Mr. Dolan inquired whether this would be a revocation of the CUP, and Ms. Seto confirmed that Code Enforcement would not be needed as the use would expire as conditioned.

Chair Blank stated that if the condition is not being met, Code Enforcement would officially have to inform the applicant, giving them the opportunity to correct, with all the timeframes and ministerial processes. Ms. Seto stated that technically, the Code Enforcement Officer would need to go out and see that they were actually operating and not meeting that condition; then there would be a possibility for the applicant to ask for a modification of that condition.

Chair Blank inquired if the Code enforcement process would be required to issue an initial letter that the business is in violation and should shut down, followed by 30 days to correct the violations. Ms. Seto replied that it would depend on the type of violation: some are correctable and would most likely require only one letter.

Chair Blank inquired if the letter would be the notice of revocation or actual revocation, as the Commission has had situations like this in the past where there have been egregious Code violations and the Commission has had to go through this process.

Ms. Decker replied that it depends greatly upon how the condition is crafted. She explained that if the condition is craft where this approval shall expire seven months from the date of approval unless childcare license is applied for and obtained, then this conditional use permit automatically sunsets and expires, and no Code enforcement would be necessary; the business owner would be contacted, and staff would indicate that his conditional use permit has expired.

Chair Blank suggested using Mr. Dolan's verbiage that "Within seven months of approval, Tri-Valley Martial Arts shall obtain a childcare license from the State Department of Social Services. If the childcare license is not obtained and business is continued under the rest of the conditions of approval, the City could revoke the conditional use permit on the basis that the applicant did not obtain the childcare license."

Commissioner Fox inquired whether the applicant would have to be operating under the State-mandated ratios for children and teachers and screening provisions during the temporary timeframe or if he would be allowed to be the only instructor there.

Ms. Decker replied that what staff has been talking about is allowing business to operate with limited hours for the number of children. She stated that the City does not require background checks for those recreation and skills training program instructors.

Commissioner Fox inquired if it is the City's Code enforcement responsibility to ensure the health and safety is maintained during that six-month timeframe if the State is not monitoring the facility. Ms. Decker said yes.

Commissioner O'Connor noted that it is not just hours of operation but other activities as well. He inquired if the Commission should craft a condition during the temporary time that the facility would not engage in some other activities such as transporting and childcare-like activities.

Ms. Decker replied that the Commission can certainly add that but that there are numerous tutoring facilities that have skills training and educational forums for children that have vans picking up children and engaging in other activities besides tutoring. She noted that what Mr. Pfund has placed in his narrative is that he will be picking up children and bringing them to the facility, which complies with the requirement for children being signed-in and signed-out.

Commissioner Narum stated that her expectation is that Mr. Pfund will operate in good faith as if he has a daycare license with employees, record-keeping, etc, limiting the number of hours a child can be there to 16. She indicated that she is willing to support this because it has gone on way too long and the Commission should show some middle ground. She added that a condition can be included that if by June 1st he still has not obtained his license, he should demonstrate to the Commission that he has been operating like a daycare.

Commissioner Fox stated that she believes there could be a condition that states the student ratios for children 12 and under need to comply with Title 22 requirements for a school-aged child. Ms. Decker stated that Mr. Pfund has indicated he will be acting and is willing to accommodate these requests.

Chair Blank moved to make the conditional use findings for PCUP-229 as listed in the staff report and to approve the conditional use, subject to Exhibit B of the staff report, with the following amendments:

- **Modify Condition No. 4 to indicate that until such time that the applicant obtains a childcare license, no children aged 12 years and under can participate in the facility's program for more than 16 hours per week and longer than the 12-week period outlined in the private recreation exemption section required by the State Child Care Licensing Division. During the interim timeframe the facility is operating without a childcare license, the**

applicant shall meet all requirements of the State with respect to documentation, operations, student ratios, and all other requirements of the Child Care Licensing Division.

- **Modify Condition No. 7 to allow the use of orange-colored rubber training “mock” guns only for the evening adult classes.**
- **Modify Condition No. 9 to include language informing the parents of participating children of the industrial uses in the surrounding site within Valley Business Park.**
- **Modify Condition No. 10 to include language that the applicant shall obtain a childcare license from the Department of Social Services by or before June 30, 2009. If it is uncertain that a childcare license can be obtained by this date, it is the responsibility of the applicant to submit a request to modify the conditions of approval at least 30 days before June 30, 2009. If a childcare license is not procured or a request to amend the conditions of approval is not presented to the Planning Division, the use shall sunset and all operations shall cease immediately. The interim use of the site shall not be permitted beyond June 30, 2009.**
- **Modify Condition No. 13 to include language that no outdoor storage is allowed except to accommodate existing trash enclosures.**
- **Add a new condition that no activities shall be conducted beyond the hours noted in Condition No. 4, and that the facility may remain open for transitioning between daytime and evening classes and for a ½-hour period before and after the hours of operation for the facility to be cleaned and set up and for patrons to leave the facility.**
- **Add a new condition that overnight camps shall not be permitted and no children or adult, including the applicant and facility staff, shall be permitted to stay overnight in the facility for any reason.**

Commissioner Fox inquired about the student-teacher ratio, and Chair Blank replied that this would be included in Condition No. 8. Ms. Decker confirmed this was included in the condition.

Commissioner Narum inquired if there was interest in having Mr. Pfund return to the Commission prior to June 30, 2009, and Chair Blank replied that he believed this should be up to the applicant.

Commissioner Narum inquired how any complaints might be handled, and Chair Blank said these would be handled through the normal Code enforcement procedures.

Commissioner Olson seconded the motion.

ROLL CALL VOTE:

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

Resolution No. PC-2008-58 approving PCUP-229 was entered and adopted as motioned.

d. 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.

This item was continued by staff to the December 10, 2008 Planning Commission meeting.

Chair Blank called for a recess at 9:37 p.m. and thereafter reconvened the regular meeting at 9:47 p.m.

Commissioner Fox left the meeting during the break.

7. MATTERS INITIATED BY COMMISSION MEMBERS

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

No discussion was held or action taken.

8. MATTERS FOR COMMISSION'S REVIEW/ACTION

a. Future Planning Calendar

No discussion was held or action taken.

b. Actions of the City Council

No discussion was held or action taken.

c. Actions of the Zoning Administrator

No discussion was held or action taken.

9. COMMUNICATIONS

No discussion was held or action taken.

10. REFERRALS

No discussion was held or action taken.

11. MATTERS FOR COMMISSION'S INFORMATION

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

12. ADJOURNMENT

Chair Blank adjourned the Planning Commission meeting at 9:50 p.m.

Respectfully,

DONNA DECKER
Secretary