

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

DRAFT

Wednesday, November 12, 2014

CALL TO ORDER

The Planning Commission Meeting of November 12, 2014, was called to order at 7:00 p.m. by Chair O'Connor.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by the Commission.

1. ROLL CALL

Staff Members Present: Brian Dolan, Director of Community Development; Adam Weinstein, Planning Manager; Julie Harryman, Assistant City Attorney; Steve Otto, Senior Planner; Eric Luchini, Associate Planner; Jennifer Wallis, Associate Planner; and Maria L. Hoey, Recording Secretary

Commissioners Present: Commissioners Nancy Allen, Jack Balch, Greg O'Connor, Herb Ritter, and Gina Piper

Commissioners Absent: None

2. APPROVAL OF MINUTES

a. October 22, 2014

Commissioner Balch requested the following:

- Modify the first sentence of the last paragraph on page 18 to read as follows:
“~~Mr. Blake~~ Commissioner Balch replied that the fruit is edible if the recycled water....”
- Modify the sentence of the ninth paragraph on page 21 to read as follows:
“Commissioner Balch stated that he personally likes Mr. Tassano’s comments and would personally support the left-turn lane in the ~~Building A’s~~ entry to the entire complex because this is the only entry....”

- Modify the last sentence of the third paragraph on page 24 to read as follows: “He noted that the architect mentioned the tightness of the site and the parking ratio...the applicant should be able to ~~take away~~ tuck in the staircases.”

Commissioner Allen requested the following:

- Modify the last sentence of the second full paragraph on page 8 to read as follows: “She indicated that it is really important that ~~that~~ the applicant put back some large trees because the trees to be removed provide ~~shading~~ screening for that shopping center.”
- Modify the sentence of the second-to-last paragraph on page 12 to read as follows: “Commissioner Allen asked Mr. Tassano how he will know if there is an issue to address ~~or for someone to redesign~~ with the drive-thru.”

Commissioner Balch moved to approve the Minutes of the October 22, 2014 Meeting, as amended.

Commissioner Piper seconded the motion.

ROLL CALL VOTE:

AYES: Commissioners Allen, Balch, O’Connor, Piper and Ritter
NOES: None
ABSTAIN: None
RECUSED: Commissioner Balch on Item 6.a.
ABSENT: None

The Minutes of the October 22, 2014 Meeting were approved, as amended.

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

Michael Miller, together with his wife, Darlene, stated that they are long-term residents of Pleasanton and own a home in the Valley Trails neighborhood and appreciate very much the chance to bring before the Commission an issue that is very important to them in a personal way. He indicated that they live right next to the Masonic Lodge located at 3370 Hopyard Road, and theirs is the only property that shares a fence line with the Lodge.

Mr. Miller stated that prior to 2016, they had no problems with the Masons; the Masons were perfect neighbors, and the Millers never heard a sound from the Lodge even when between 20 and 30 commercial events were conducted inside the building every year. He indicated, however, that somewhere between 2004 and 2006, the City allowed the Masons to remodel its building, breaking through the back wall and installing French doors, thereby creating access directly from the building into the backyard area and turning the backyard into a place where events for the public or for the Masons could be conducted. He noted that the City also allowed the Masons to rent the building to a commercial heating company which has, in fact, established the building as a place of business, all of which are in violation of the Mason’s Conditional Use Permit, the Conditions of Approval, the Zoning Ordinance, and the General Plan. He added that

this noise nuisance violates the City ordinances because it is directly in the backyard of residences.

Mr. Miller stated that they have been discussing and working on this matter with the City for eight years, which is very troublesome to them because the City is not only allowing the Masons to continue to use this backyard area, it is also allowing a catering company to rent that building and conduct its business there, as well as use the backyard area for its events. He indicated that they have come to the City to say that this is a wrong thing to do in a residential area, but the City, instead of enforcing the Conditional Use Permit and Zoning Ordinance, has asked them to negotiate with the Masons, essentially allowing the Masons to do things that its Conditional Use Permit apparently does not allow.

Mr. Miller stated that what they are asking is that the City simply enforce the 1977 Conditional Use Permit, staff report, and building design review, which prohibits the Masons from using the backyard. He indicated that he would also like the City to add conditions for this Conditional Use Permit requiring any other entity that uses the building for whatever purpose to adhere to those same guidelines and not use the backyard area. He noted that they are trying to be very good neighbors because they are not asking that the commercial activities occurring there be shut down or the catering company be removed; all they are asking is that the terms of the Conditional Use Permit be enforced and that the noise that affect them be stopped. He added that there are a couple of points that may seem minor that he wanted the Commission to take note of: (1) the Masons do not have a business license; and (2) a similar situation occurred in Los Angeles where an attempt was made to move a commercial business into a residential area, and the court ordered them to cease and desist that activity as a violation of the zoning ordinances and the rights of conditional use in that area.

Mr. Miller stated that they live in constant fear that there would be a party of 200 people in the Lodge's backyard on a Saturday night, talking, laughing, drinking, having a great time, and the Millers would be in their house cowering. He noted that this is a continuing, ongoing problem which is destroying their peace of mind, damaging their property value, and opening the door for any operation like the Masons to morph into a commercial business in a residential zone. He indicated that they are seeking the Commission's help to agendize a hearing to review and enforce the Masons' Conditional Use Permit and Conditions of Approval. He added that this matter has also revealed an issue that human voices are exempted from the Noise Ordinance, such that people can talk as loud as they want without violating the Noise Ordinance.

4. REVISIONS TO THE AGENDA

Mr. Weinstein stated that there were no revisions to the agenda.

5. CONSENT CALENDAR

Consent Calendar items are considered routine and will be enacted, approved, or adopted by one motion unless a request for removal for discussion or explanation is received from the Planning Commission or a member of the public by submitting a speaker card for that item.

Commissioner Balch recused himself from Item 5.a. due to a conflict of interest.

a. P14-1143, Islamic Center of Zahra

Application for a Conditional Use Permit to operate a religious facility within an existing building located at 1059 Serpentine Lane within Valley Business Park. Zoning for the property is PUD-I (Planned Unit Development - Industrial) District.

Commissioner Allen moved to make the required Conditional Use Permit findings as listed in the staff report and to approve Case P14-1143, subject to the Conditions of Approval as listed in Exhibit A of the staff report. Commissioner Piper seconded the motion.

ROLL CALL VOTE:

**AYES: Commissioners Allen, O'Connor, Piper, and Ritter
NOES: None
ABSTAIN: None
RECUSED: Commissioner Balch
ABSENT: None**

Resolution No. PC 2014-52 approving Case P14-1143 was entered and adopted as motioned.

Commissioner Balch joined the Commission for Item 5.b.

b. P14-1169, B&T Auto Sales

Application for a Conditional Use Permit to establish automobile sales in conjunction with an existing automotive repair/smog business at 4262 Stanley Boulevard. Zoning for the property is C-S (Service Commercial) District.

Commissioner Ritter moved to make the required Conditional Use Permit findings as listed in the staff report and to approve Case P14-1169, subject to the Conditions of Approval as listed in Exhibit A of the staff report. Commissioner Piper seconded the motion.

ROLL CALL VOTE:

**AYES: Commissioners Allen, Balch, O'Connor, Piper and Ritter
NOES: None
ABSTAIN: None
RECUSED: None
ABSENT: None**

Resolution No. PC 2014-53 approving Case P14-1169 was entered and adopted as motioned.

- c. **P13-1987 and P13-1988, U-Haul**
Request for a determination of substantial compliance with an approved Design Review application for a U-Haul moving, rental, and storage facility at 5555 Sunol Boulevard. Zoning for the property is I-P (Industrial Park) District.

This item was removed from the Agenda.

6. PUBLIC HEARING AND OTHER MATTERS

- a. **P14-0829, Greg Munn, Design Tech Associates/George and Mary Schmitt**
Application for Administrative Design Review approval to construct the following at the existing dwelling located at 554 Hamilton Way: (1) an approximately 781-square-foot single-story addition to the rear of the house; (2) an 88-square-foot, 13-foot, 6-inch tall covered front porch; and (3) an approximately 663-square-foot second-story addition with an approximately 217-square-foot second-floor deck to the west of the house. Zoning for the property is R-1-6,500 (One-Family Residential) District.

This item was continued from the August 13, 2014 meeting.

Jennifer Wallis presented the staff report and described the layout, scope, and key elements of the proposal.

Commissioner Piper inquired how many homes there are in the original Rosepointe neighborhood.

Ms. Wallis replied that there are about 53 homes.

Commissioner Allen referred to the letter from Ms. Bengtson, dated November 4, 2014, and asked staff to clarify that the statement that the two inoperable and opaque windows overlooking Ms. Bengtson's property would not require any process to convert to operable clear glass in the future.

Ms. Wallis replied that with respect to any windows above ten feet, which would include all second-story windows, any changes to the size or the character of those windows that would somehow affect a neighbor would have to go through the Administrative Design Review process, which would include notification of any adjacent neighbors who could be affected. She indicated that if the second-story windows in this case were to be modified, it would have to go through that process and Ms. Bengtson would be notified. She added that she had spoken to Ms. Bengtson about this earlier today.

Chair O'Connor stated that he thought there were only five two-story houses in the neighborhood but that staff says there are six. He inquired how many of those six homes are actually split-level as opposed to two stories.

Ms. Wallis replied that there are six houses in the 1965 Subdivision Map and that she believes three of them are two stories.

Commissioner Balch inquired if the six homes were all originally split-level or two stories or if some of them eventually became two stories.

Ms. Wallis replied that some of the houses have become two stories. She noted that the original records on the original homes only indicated their square footages and did not say whether they were one or two stories.

Commissioner Allen recalled that when she first visited the neighborhood, the two-story poles were primarily on the perimeter of this development and did not see any two-story homes on Hamilton Way. She asked staff if that was correct.

Ms. Wallis said yes.

Commissioner Allen asked staff, for the sake of the audience and anyone who has not been involved with this, to clarify what applications have come forward over the past number of years requesting approval to build two-story homes and what the disposition of those were.

Ms. Wallis replied that within the last ten years, three applications for second-story additions were made. She indicated that they went through the Administrative Design Review process, and the adjacent neighbors were notified. She further indicated that staff received no request or concerns for one application, which was then approved and the second-story addition was constructed. She continued that the other two cases went before the Planning Commission, and staff had recommended approval but were denied; two of them were appealed to the City Council, and the Council continued the items, directing the applicants to work further with the neighbors. She noted that the two applicants did not return to the Council, so they were never officially approved or denied. She added that neither application moved forward: one decided to abandon the project altogether, and the other decided to build a single-story addition.

Chair O'Connor recalled that the Commission received a couple of letters the first time this came before the Commission, and again this time, saying that people felt they were not given enough time or they did not know about a previous second-story addition. He inquired if that would have been one of those homes.

Ms. Wallis said yes. She stated that the constructed second-story addition was one of those home.

THE PUBLIC HEARING WAS OPENED.

George Schmitt, Property Owner/Applicant, stated that after the first Planning Commission meeting, he and his architect met with staff about the overall concerns brought up during the first meeting and discussed what needed to be done, and the architect modified the plans to address Ms. Bengtson's concerns. He pointed out that reference keeps being made to the "original Rosepointe," but the street names do not change, and Hamilton Way connects to Arlington Drive and Amber Lane, which are at

both ends of the neighborhood. He asked the Commission to take into consideration that houses on the right side of Arlington Drive are all two stories, and there are seven two-story houses on the new side of the neighborhood to the back. He added that when he drives into his house, he passes by seven two-story houses. He asked the Commission to approve his application.

Greg Munn, Design Tech Associates, Project Architect/Applicant, stated that following the last Planning Commission meeting, he and his staff, along with the Schmitts, reviewed their options, taking into account the concerns of the neighbors that are and were factual in nature and not simply suggesting subjective personal opinions. He indicated that they modified the design to meet the requirements of the current zoning regulations and the request of the Planning Commission.

Mr. Munn briefly summarized the changes made:

- the view of the ridgeline has been increased;
- the roof pitches have been reduced from 6 and 12 to 4 and 12 to match the original residence;
- the second-floor addition was moved forward towards the front of the residence; and
- the rear deck was moved to the left side of the residence to not impede on the other neighbor and faces the front yard of the adjacent neighbor.

Mr. Munn reiterated that second-story additions are permitted per the current zoning regulations; the architectural ranch style is not limited to one-story dwellings, and a number of people saying otherwise repeatedly does not make it true. He added that this applies to the elements and details of the style as well. He noted that he has been studying and practicing architecture for over 40 years, so he believes he would be a more appropriate judge of architectural styles. He pointed out that the Schmitts are not seeking any special treatment or allowances; only those that are permitted to anyone in the neighborhood.

Mr. Munn stated that it is his understanding from Ms. Bengtson's letter that some of her landscaping was installed to block her view of the Schmitts' shed which is to be either relocated or removed. He indicated that if Ms. Bengtson desires to maximize her view of the ridgeline, she can adjust her current landscape screening the shed, which also blocks a big portion of her view of the ridgeline.

Mr. Munn concluded by saying that the Schmitts have spent a lot of time and money to develop a new design that mitigates the concerns of the neighbors and the neighborhood within the constraints of the current zoning designation. He asked the Commission to approve the application as recommended by staff in the staff report.

Dolores Bengtson stated that the opportunity to provide productive input has never been available, and the applicant has been unwilling to enter into any dialogue and expressed concerns. She indicated that she understands the applicant has no obligation to work with the neighbors, but it seems the "Pleasanton way" encourages such courtesies. She stated that it is never easy to be in conflict with a project proposed by a neighbor, and it is not easy either to disagree with the recommendation of staff that she likes and respects. She indicated that she appreciates the property rights and the desire of the

next-door neighbor to improve and enlarge their home, but she also values her right to protect her property from many impacts to the extent possible.

Ms. Bengtson stated that she would like to provide a few quick words of explanation for those who may believe she is just a mean old lady seeking to keep a lovely family from having its dream house by complaining about loss of view. She indicated that she understands she does not own that view, and those who know her understands that she has a long and personal connection to Pleasanton Ridge Park and Augustine Bernal Park. She noted that she has hiked on the ridge for years, authored a wildflower guide, and her personal note cards feature the Oak Knoll. She added that she has a passion for the ridge and Augustine Bernal Park and regrets the loss of the majority of the ridge view and Augustine Bernal Park, which both submittals clearly block.

Ms. Bengtson asked the Commissioners to set aside the issue of view as she considers it lost, and asked that they consider the impact of the revised design versus the original design on her home and yard. She stated that in her opinion and in the architect's attempt to address the view issue, he created a far more invasive view into her home and yard with the possible loss of privacy. She handed the Commission three exhibits that show the impact of the first and second submittals on her property, plus photos of adjacent homes displaying the consistent ranch-style architectural design of the neighborhood. She noted that to reach the point where a major home remodel in an established neighborhood could move forward meeting the applicant's goals while enjoying major support from adjacent property owners and the neighborhood requires a willingness to work together. She further noted that the applicants, Mr. Munn and the Schmitts, have not been open to dialogue. She pointed out that the Minutes of the August 13, 2014 meeting confirm that three of the Commissioners suggested that the applicant work with the neighborhood. She stated that Chair O'Connor questioned how much time should be allowed for the applicant to return with a revised plan, and *"Mr. Dolan replied that he did not think it would take long but that depending on whether both parties are willing to work and how hard they work, the minimum would be 30 days. Chair O'Connor added that more than just one neighbor is involved and that he would probably feel better if 60 days were allowed."* She indicated that she listened to the audio of the meeting to confirm the Minutes were correct, and they were, almost word for word, and so it is clear that they expected to have a dialogue.

Ms. Bengtson stated that during the 60 days between the two meetings, she sent two emails to George Schmitt, and he responded to both, but no invitation for dialogue was forthcoming. She added that she has never met the architect. She indicated that the optimistic but naïve logic told the reason she and others were not being contacted for some dialogue by the applicant was that the submittal under preparation would not be controversial, and at the end of 60 days, she was notified that the revised submittal was available for review. She noted that the revised submittal was most disheartening, and she wondered why no one had had the courtesy to share the direction they were headed in the revised application. She indicated that she certainly would have quickly told them that the revised version, while preserving a bit more ridge view, replaces a neutral roof of the first submittal with the second story of the wedding cake design, along with the two windows overlooking all of her backyard, patio area, garden, and pool. She added that the proposed structure shown so prominently from her home in the revised application is far more visually intrusive than the first submittal, and telling

her that the windows will be opaque and inoperable avoids the fact that while a permit is required for changing windows located above ten feet, in practice, there is no oversight, and she would again be left to come and complain.

Ms. Bengtson stated that in tonight's staff report, the applicant is excused from working with the neighbors stating that essentially it would do no good as the neighbors would only be satisfied with a one-story home. She indicated that to her, more issues were at stake than one or two stories, and it appears that the applicant and staff believed that the revised submittal offered a good solution to my concerns, and her opinion was unimportant. She pointed out that Pleasanton prides itself on retaining and encouraging civil discourse between those of diverse opinions, and the process for this application to date has certainly not reflected the "Pleasanton way." She added that if the applicant would have met with her and the neighbors to review remodeling goals and practical options under consideration, she suspects the original application may have been processed administratively. She noted that knowing the options, she certainly would have supported the initial application over the revised one, although she and many of the neighbors would clearly prefer a one-story plan. She thanked the Commissioners for their time and asked that they deny this application.

Karl Hagmaier stated that he has lived in Rosepointe for 47 years and that prior to the construction of Rosepointe, he and his wife met with the developer, Ray Martin, who showed them the plans for the homes and the roads and told them that Rosepointe would contain only one-story homes. He indicated that they liked the plans and decided to have Mr. Martin build their home.

Mr. Hagmaier stated that they have enjoyed living in Rosepointe all of these years and would hate to see this development ruined by having existing one-story homes remodeled into two-story homes. He added that allowing this two-story addition would reduce single-story availability which would allow older people and handicapped people to live there. He noted that Rosepointe is a wonderful development the way it is, unique and well maintained. He pointed out that a two-story addition does not fit and asked the Commission to make the right decision and deny this request.

Charles Meier stated that he and his wife have lived in Rosepointe since 1971 and that they understood that Rosepointe was going to be single-story homes. He agreed that there are a few along Arlington Drive that are two story, but they mostly face the highway in their backyards. He indicated that he met with staff and reviewed the proposal, and he is very concerned that it is still not in keeping with the character of Rosepointe as he and many people see it. He noted that Rosepointe is an architecturally unique area like Second Street in Downtown Pleasanton. He added that Rosepointe residents have come to enjoy a neighborhood of single-story homes, affording a level of privacy which is virtually unavailable in today's housing in Pleasanton where everything is two story.

Mr. Meier stated that as he looks at the proposed design, he understands the neighbors who have been affected and do not agree with it. He noted that they were going to lose their privacy and some of their view. He indicated that there was one approval of a second story many years ago, which was built with no windows facing the backyard neighbor. He stated that it was subsequently sold, and the next owner put in a couple

of windows and now the people behind them have someone looking into their backyard, something they did not bargain for. He noted that a vote to approve a second-story addition in Rosepointe will irreversibly change the character of Rosepointe and will mean that the next second-story addition and the one after that will be approved. He pointed out that this will transform Rosepointe into a neighborhood like all others with second-story homes that erode privacy and diminish enjoyment and the unique value of their neighborhood. He stated that he would really like to see a “no” vote on this plan.

Karen Toms read a letter on behalf of Janice and Michael O'Rourke who were not present.

On July 11, 2014, I wrote the Pleasanton Planning Commission expressing my concerns over this project and requested denial of the second-story addition. Today, I write again expressing the same and additional concerns over the redesign and planned structure and am urging denial of this project, in particular, the second-story addition.

As I am not an adjoining neighbor of the subject property, I cannot speak to loss of privacy and obstructed views (although in reviewing the proposed design, I can certainly understand their concerns). However, I have been a resident of the Rosepointe development for the past 10 years, so I limit my concerns to overall view:

- 1. The proposed design is out of character for the Rosepointe development. The second-story addition makes the house look massive – so much so, this would be the single most notable feature on Hamilton Way and likely the whole development. A house of this size and proportion would be more in harmony with the Sycamore Creek development a few blocks away or other planned developments with similar sized houses – both in and outside of Pleasanton.*
- 2. The Rosepointe development is 45 years old and therefore reflects the architectural features and footprint sizes common during that time. As noted by others, the original developers – or the City – were concerned enough about preserving the single-story ranch-style look in this area that specific restrictions on second-story additions were stated in the CC&R's. I appreciate that times change, and newer developments in and around the City reflect changing tastes and desires for larger homes. However, to break up the “look and feel” of any development, especially one as old as Rosepointe, with such additions seems at odds with the long-cherished stance the City of Pleasanton has held in preserving its heritage. The “look and feel” of the Downtown area is fiercely protected from such out-of-character improvements, so I would think the City would afford the same consideration to residents trying to preserve their older neighborhoods.*
- 3. And my final point ... “Where does it stop?” If an individual need only meet the Planning rules for a structure without consideration of its suitability for a particular neighborhood, then how many more approvals will be granted? Or put another way, if you allow a second-story in Rosepointe – especially now after all these years – how do you realistically reject similar-sized projects that will surely come along in the future? This fact would be a selling point to buyers in this area.*

After discussions with a number of long-time neighbors – some original owners – I am struck by the fact that the applicant's family has lived in – and enjoyed – the Rosepointe area for a considerable number of years, so the cherished desire of the residents to keep the developed single story is clearly not a surprise.

I urge the Planning commission to reject this application for a second story as not being suitable for – or in character with – the Rosepointe area. In the absence of rejection, Pleasanton will surely lose a piece of its history forever.

John Toms stated, in response to a Commissioner's question regarding whether the three two-story houses on Arlington Court at the top in Rosepointe were built that way, that those were built as split level homes. He indicated that there are six two-story homes at Rosepointe, and the two-story maroon homes on Arlington Drive are not part of Rosepointe.

Mr. Toms stated that at the last meeting concerning this project, he spoke about his experiences in construction and the need for compromise and accommodation when disagreements arise, and he was pleased that the Planning Commission saw a similar perspective when they postponed a decision on the application to give that compromise and accommodation a try during a 60-day time period. He indicated that he was surprised to learn that these new plans had been submitted without dialogue between the parties involved. He added that the staff report says that to determine what he and his fellow neighbors thought about the subject at hand and the suggestion for an opportunity for discussion was unnecessary because staff assumed to know the full breath of the neighbors' thoughts on this. He indicated that it is disconcerting that a department chose to determine that those who attended the last meeting all have the static views on the matter and none of them were interested in accommodating or compromising with the applicant during the 60-day period. He noted that, in fact, if that had happened, he would have expressed that the new wedding cake design is a greater departure from the original design as to how it fits in with the rest of the neighborhood, and he suspected that others in the neighborhood would feel the same way.

Mr. Toms stated that he would like to find a solution away from the two stories, but he is more concerned that these current designs do not fit the 1970's style neighborhood of single-story homes. He pointed out that many would try to remodel in a manner that maintains the integrity of the particular neighborhood, and this unique Pleasanton jewel of a neighborhood will forever be eliminated from the City's inventory of special neighborhoods and just become another residential street in town, and that is a detriment to the entire community.

Mr. Toms asked the Commission to take into consideration that this design does not meld with the rest of the neighborhood per the General Plan, either in scale or look, and take into account that no attempt was made at compromise and accommodation requested by the Commission during the last meeting on this matter. He requested that the Commission deny this application and see if a design can be had that allows the applicant of this property the additional space in their home, which they are entirely entitled to, without compromising the uniformity and style of this particular neighborhood.

Forest Sass stated that he has lived in the neighborhood for 27 years, and at the time his wife and he purchased the home, they were promised that Rosepointe would remain all single-story homes. He indicated that he understood there are some split-level homes, what might be thought of as two-story homes, but he and his wife were promised that this community would remain single-story, and if the Commission were to approve this application, he would feel betrayed of that promise.

Mr. Sass stated that he does not want to deny the owners the need or desire to expand the size of their home, but his objection is specifically the two-story nature of the home. He indicated that approving this house would be tantamount to “allowing the camel’s nose into the tent,” and once begun will never stop: there would be other applications for two-story approvals, and he would not like to see that.

Mr. Sass stated that roughly 15 years ago, one of the neighbors around the corner on Arlington Drive requested a two- story addition to their house. He indicated that his wife and he and other neighbors objected to it for the very same reasons that he is standing here before the Commission today: that it would be inconsistent with the nature of the Rosepointe development. He noted that they ultimately dropped their request.

Mr. Sass closed by stating that he grew up in the south end of Alameda, and the community he lived in was predominantly single-story Craftsmen bungalows built about the 1940’s. He indicated that over a span of 50 years, he watched the City of Alameda allow second stories to be built in that neighborhood, and that street where he grew up is now filled with these out of character, large homes that look overbuilt and very ugly. He asked the Commission to please deny the request.

Christine Steiner stated that she has lived in Rosepointe since 1967 and that she finds it very, very sad to be here because Mr. Schmitt spent many hours in her family room and living room playing with her kids and hitting balls on her back lawn. She indicated that she really has nothing personal about him because he was part of her family for years; his family moved away, the house was rented for many years, and then he came back.

Ms. Steiner stated that one of the reasons they purchased the house was because Ray Martin did say it was going to be single story, and they were larger than average lots for Pleasanton. She mentioned that Mr. Martin built approximately 30+ homes there, and then he ran into financial difficulties, the real estate market went down, and he starting selling off lots, some of which were bought by speculative builders who built speculative homes. She noted that her experience working with her immediate neighbors on that side and the builders was phenomenal. She stated that when they were going to build on those lots, they did not go to the City first; they came to her with plans showing what they were proposing. She added that after the homes were built and one of her neighbors wanted to change something on her house, she came to her first before going to the City; and in the same fashion, when she was adding a window on the side of her house, she went to her neighbor first, and everything was fine. She indicated that this was the way their neighborhood worked and it is very, very sad that Mr. Miller’s parents, when the property went to his son, never ever came to any of the neighbors, who were not given any notification either.

Ms. Steiner stated that there was a realtor-developer in the area, whose cousin wanted to build condominiums on the land outside of Rosepointe, and the whole neighborhood was called together; the neighbors said that they did not want condominiums, the realtor-developer listened, and now there are three two-story homes there. She added that she did not receive any notification for the Administrative Design Review application for homes on Hanover Court and on Amber Lane because she did not live in the immediate neighborhood, but her neighbor did and told her about it. She stated that she understood that windows are not supposed to look over into the neighbor's yard, but this was the most atrocious-looking second-floor addition, a very contemporary-looking piece on a little ranch-style home; and to the credit of the later buyers, they looked at the house and wanted to redo it to more reflect the neighborhood.

Ms. Steiner stated that these are the most difficult decisions that the Planning Commission and staff actually have to make, and she urged them to go out, look at that neighborhood, and see if it is ranch, contemporary, and low, and that the split-levels are there because of the contours of the land. She asked the Commission to either send it back and have them come and work with the neighborhood in a meaningful way, or deny it because the neighbors certainly were never approached, and that has not been the history of her neighborhood.

George Schmitt stated, with respect to his not talking to any of his neighbors, that he had plenty of communication with Ms. Bengtson before he even started the first set of plans on the house. He indicated that he told her they were doing an addition, and she had responded that she would not object if it was not too much. He noted that he told her they met with staff and were modifying the plans to address her view concerns, which they did and increased her view. He added that he showed her the plans and the overlay.

Mr. Schmitt stated that Ms. Steiner talks to Ms. Bengtson everyday, so it was not by chance that Ms. Steiner found out he was doing the addition. He noted that when Mr. Toms moved into the area in the late 1980's, all the two-story homes already existed, and he did not think then that they were not part of his neighborhood, as he does now because he is opposed to the Schmitts' second-story addition.

Mr. Schmitt stated that the speakers say they were promised that there would only be single-story houses, but that is just hearsay. He pointed out that there are no CC&R's, and there is nothing that ever said they would be single-story houses, so that does not hold any weight on anybody's decision.

Mr. Schmitt stated that he has lived in this neighborhood since 1976, not as long as all of the others, and as mentioned earlier, he passes by seven two-story houses on his way to his house, there are two-story houses right behind his house that look down into his yard, and there are two-story houses above his house that can be seen across the street from his. He indicated that these houses are in his neighborhood, in his yard, and it is not fair for them to say that they are not.

With respect to the view, Mr. Schmitt stated that there is no view easement in the area, so nobody has a right to any views. He indicated that they did their best to move the addition forward, and now it looks like a two-story, unlike the first plan. He noted to staff

that he is sure the neighbors will now favor the first submittal to the revised one. He stated that the speakers were saying most of the neighborhood is opposed to the second-story addition; there are 53 houses in the original neighborhood, and only six people are present tonight to object. He also pointed out that when the City sent out notices on his proposal, those in the neighborhood behind his home as well as those to the right and on the other side of the neighborhood were included, and these people are not in the original Rosepointe, but they are part of the neighborhood. He stated that there being no two-story houses on Hamilton Way is not a reason to deny his application. He indicated that they did everything they could in their power to address the concerns, they spent a lot of time and money with his architect and with planning staff, and they've followed the rules to do the addition. He asked the Commission to approve his addition.

Commissioner Piper ask Mr. Schmitt if his original plan is more desirable than the new plan.

Mr. Schmitt replied that it is the case for some, but he cannot speak to that for all the people. He stated that he just knows that the first one blocks a lot more of Ms. Bengtson's view, which seemed to be the major sticking point when this was before the Commission the last time, and that is what they tried to fix.

Mr. Schmitt stated that he has known these people for a long time, his children talk to Ms. Bengtson and have cookies over there, and he honestly does not like the fact that he has to argue with his neighbor; however, it is their property and they want to modify it, and he thinks they should be allowed to do it because it is within their rights and they followed all the rules. He indicated that they are not asking for a variance; they just want an addition and improvement to the house they live in now.

Chair O'Connor stated that he knows Mr. Schmitt talked to the neighbors when he did the first plan, but the neighbors are saying he did not come back with the second plan. He asked Mr. Schmitt if there was much outreach when he went back to revise the plan and come up with the second plan.

Mr. Schmitt replied that they mainly came and met with staff and went over what was done. He indicated that the only discussion he had with Ms. Bengtson was when he told her they were modifying the plans to increase her view. He stated that he did not think it was fair for him and his family to have to sit down with neighbors and discuss the plans on his house. He indicated that he wanted it to look the way he wanted it to look, and while other people's opinions matter, there are several opinions in the neighborhood that want the addition; only those who are opposed to it are here tonight. He added that it would be ridiculous to get into a match where everyone brings who is in favor of and who is opposed to the proposal. He pointed to the Commission as the body that is supposed to make the decisions, the reason why the Commission exists.

Commissioner Ritter asked Mr. Schmitt if any of the neighbors proposed what they think a second story should look like on his house.

Mr. Schmitt said no. He stated that the neighbor where the new balcony faces actually drew up a new remodeled plan, but that was about it. He added that no one has come over, and he thinks most of the neighbors, but not all, have said they do not want the second floor. He pointed out once more that there are six people present tonight, and there are 53 houses in the original neighborhood, and that does not include what he considers to be the neighborhood now.

Commissioner Balch asked Mr. Schmitt which of the two plans was his preferred plan.

Mr. Schmitt replied that the layout inside the house, the stairs, and everything else would work better in the second plan; but the first plan would look better aesthetically on the outside.

Commissioner Allen asked Mr. Schmitt if he has the square footage to build a single-story addition of the same square feet if he were forced to do that.

Mr. Schmitt replied that he did not know for sure. He stated that it would probably be close, but they would be infringing on the boundary lines as his is a split-level backyard. He noted that if he started getting up in to the top half, then he would have to grade it out, and it becomes a much bigger issue. He indicated that he cannot speak to that and would have to ask his architect.

THE PUBLIC HEARING WAS CLOSED.

Commissioner Balch asked staff to display the slide of the GIS map that shows the notification area for the postcard notice so Ms. Steiner's comment that she was not sent a notice could be addressed.

Ms. Wallis explained that the original application was for an Administrative Design Review approval, and the City of Pleasanton requires notice of only the directly adjacent neighbors that would be affected by the addition. She noted that typically, if there were no concerns from the neighbors, the Zoning Administrator would make the decision to either approve or deny the proposal. She continued that in this case, because of the specific concerns brought up by the neighbor, staff decided to move the proposal up to the Planning Commission level, which would entail sending a notice to all property owners and residents within a 1,000-foot radius of the project site. She then pointed to the notification area on the displayed GIS map.

Commissioner Ritter inquired if this item would have basically been on the Consent Calendar if this came forward as the first plans were sent out, and everything was per the Code and there were no objections.

Ms. Wallis replied that if there were no concerns, the proposal would have been approved administratively and would have never been brought in front of the Planning Commission.

Commissioner Ritter inquired if there are other neighborhoods in Pleasanton that restrict second-story homes per the Zoning Ordinance.

Ms. Wallis replied that it would not be within the Zoning Ordinance but as Planned Unit Developments (PUD) which have their own guidelines as approved by the Planning Commission. She noted that some on the hillsides have issues with second-story additions, but all straight-zoned, single-family residential properties are permitted to have two-story additions as long as they meet all Code requirements.

Commissioner Ritter inquired if it is possible to create a zone for neighborhoods, such as Rosepointe, that would prohibit second stories.

Ms. Wallis replied that it would have to go through the PUD process, and a special PUD would have to be created that specifically had that condition.

Commissioner Ritter inquired if there are any other neighborhoods in Pleasanton for which the City has done this.

Ms. Wallis said not to her knowledge, but that some of the staff may know.

Mr. Dolan clarified that this could be done with a PUD, but an overlay district could also be created which would function exactly the same way and have specific rules for everyone in the neighborhood.

Commissioner Ritter inquired if this could be applied to a subdivision like Rosepointe.

Mr. Dolan said yes.

Commissioner Balch inquired if it would be similar to a Historic Preservation District.

Mr. Dolan replied that it would function the same way.

Commissioner Balch inquired, for clarification purposes, assuming a neighborhood like Rosepointe wanted to restrict future second-story additions, if it could opt that into its own CC&Rs or a PUD plan.

Mr. Dolan replied that it would be pretty difficult to get 53 property owners to consent to limiting opportunities, but in theory, it could be done.

Commissioner Balch inquired if it would act similar to a single-story zone that is being discussed here.

Mr. Dolan said yes.

Commissioner Piper inquired if that would be similar to creating a homeowners association (HOA).

Mr. Dolan replied that a private mechanism could be created. He stated that after the fact, he thinks that kind of limitation would be very difficult. He noted that it would actually be more efficient to propose an overlay zone and have the City do the mechanics of it, and it would end up with the same dialogue but with probably more

people involved because it would affect everybody and they would be asking the City to impose a restriction on everyone in the neighborhood.

Chair O'Connor recalled that during the first Commission hearing on this topic, it was mentioned that there was an HOA which prohibited second-story additions but is now expired. He asked staff if that was correct.

Ms. Wallis replied that based on the Minutes of the two applications discussed earlier that were appealed, reference was made to CC&R's that had expired. She indicated that there was nothing in the files showing those CC&R's or where they came from. She added that staff has not seen any CC&R's and has no proof that there ever were any CC&R's. She noted, however, that it was pretty consistently indicated in those Minutes that there was something.

Chair O'Connor commented that if the neighbors volunteered that the CC&R's had expired, it is probably true for whatever the length of time those were in effect. He added that he is certain some original owners might have a copy of those documents. He indicated that he is asking only because it shows that there was the expectation some point in the past that all the homes in the neighborhood would only be single story.

Commissioner Piper stated that she understands the preference is to have a single story, and inquired if staff was aware that Ms. Bengtson possibly preferred the original plan over the revised one.

Ms. Wallis replied that she met with Ms. Bengtson around October 15, 2014 soon after the revised plans were submitted, and reviewed those plans with her. She indicated that Ms. Bengtson acknowledged that it somewhat mitigated some views, but obviously not fully. She noted that Ms. Bengtson appeared to not have the words for the revised plan but did not make any reference to any preference of one over the other. She observed that Ms. Bengtson seemed to prefer portions of the original plans but that she could not tell if she preferred the entire plan. She indicated that she gave a copy of the plans to Ms. Bengtson, who stated that she was going to think about it.

Mr. Dolan stated that staff did hear, after the staff report was published, that Ms. Bengtson preferred the original plan.

Chair O'Connor stated that he believes he heard Ms. Bengtson say tonight that her privacy was more important than her view of the ridge.

Chair O'Connor stated that neighborhood issues are always tough. He referred to page 7 of the staff report which says that "*...the Commission's ... scope of review of project plans shall include but not be limited to ...:*

- *Appropriate relationship of the proposed building and its site to adjoining areas, including compatibility of architectural styles, harmony in adjoining buildings, attractive landscape transitions, and consistency with neighborhood character.*
- *Preservation of views enjoyed by residents*
- *Architectural style...."*

He stated that he thought the revised plan was a great improvement over the original plan as far as the look of the house. He indicated that it really was a nice looking home, but he did not think it fits with the neighborhood. He noted that the neighborhood residents have bought, over the last ten years, fought every two-story proposal they were notified of, and were successful with three of them not being built. He agreed with the concept that the camel's nose is in the tent and believes that once that precedent is set, it could become a potential for others.

Chair O'Connor stated that he believes they once had a set of CC&R's that prohibited second stories, and while most CC&R's do have an end life, the expectation was all the homes would be single story. He indicated that there is a lot of mix of one- and two-story homes in neighborhoods throughout the City, some that may have started off as one story but over the years have become a mix of one and two story. He noted, however, that other than the three split-levels that were built that way because of the topography of the lot and the two or three others that were able to sneak through that people were not aware of, the neighborhood has been successful in stopping at least three of them in the last ten years. He indicated that he would not support the application even as he wishes that the applicant could fit what he is looking for in a single-story addition.

Commissioner Allen stated that her comments would be similar to Chair O'Connor's. She noted that she generally supports Commissioner Piper's comment at the first hearing that in general, most older single-story neighborhoods in Pleasanton and in all cities are being upgraded, and usually that means going up, and that enhances the neighborhood and builds value. She pointed out, however, that there is something unique about this situation, and this neighborhood may be the only neighborhood in Pleasanton that has these tremendous views. She noted that this happens to be an older neighborhood, and there certainly was a history of expectation that appears around single-story homes.

Commissioner Allen stated that she believe that if the Planning Commission makes a decision tonight to allow this project, it will set a new precedent, as Chair O'Connor mentioned, it would be the only two-story house on Hamilton Way, and it would be saying that Hamilton Way can now have two-story homes. She noted that Hamilton Way is the interior of this neighborhood, and it does not have any two-story homes to date.

Commissioner Allen stated that she cannot support this application because first, she believes the scale of this home is out of scale to the adjoining home and the interior of this neighborhood and the majority of this neighborhood primarily; and second, because it significantly detracts from the view of the neighbor and also impacts the privacy of Ms. Bengtson.

Commissioner Ritter agreed that this is a hard one because it is a neighbor issue. He indicated that Ms. Bengtson has done so many good things in the community and the City really appreciates that and everything else that she has done. He added that not many living people have their name on the wall of a building.

Commissioner Ritter stated that if this neighborhood really believes it needs to be single story and that it is truly the way they want it to be moving forward, they should be encouraged to put an overlay zoning ordinance. He added, however, that he also believes right now that the Schmitts have presented a plan that meets the code and is acceptable through all City ordinances, and he does not want to take that away from other residents by saying that here is an ordinance and everyone has to follow the rules, and then agree to bend them if everybody jumps up and down. He indicated that his stance is either follow the ordinance or fix it.

Commissioner Ritter stated that he is a little disappointed that the applicants could not come to a better agreement with the neighborhood. He indicated, however, that he is inclined to accept the application, but with some changes. He noted that he really does not like those windows out onto Ms. Bengtson's yard and would like them either moved to another side or removed altogether.

Commissioner Piper stated that her feeling, as it was the last time, is that she is in support of the preservation of property rights. She indicated that she thinks this neighborhood is a delightful and beautiful and wonderful neighborhood that has many single stories, but she also thinks that it is unreasonable to restrict people to do what they want to do with their homes if it is reasonable. She stated that she believes the applicant has proposed something that is reasonable for the neighborhood, even though it is going up. She pointed out that people building onto their homes is the natural progression and maturation of a neighborhood. She added that the people here feel that their neighborhood is special and there is no doubt that Rosepointe is special. She indicated, however, that she feels strongly that people cannot be prohibited from doing what they want with their home as long as it is within reason. She added that she also does not agree with Chair O'Connor and Commissioner Allen that approving this project would necessarily be opening up a new precedent. She noted that there has never been a restriction on this neighborhood to begin with, so anyone can come forward at any time with an application. She added that she does not believe that if this were approved, staff will suddenly receive five new applications on Hamilton Way to build two stories.

Commissioner Balch agreed that this is a difficult decision. He stated that he believes in general that it probably is the natural progression to go to a two story from a single story in a development. He noted that it saddens him that the Rosepointe neighborhood has not taken the steps necessary to work to put a zoning overlay on to protect what they opine is precious to them, and he would strongly encourage that action. He indicated that it appears the neighborhood might have enough to do it privately, which was a particular option that staff mentioned, or, if not, it obviously appears that the staff or the City has a wealth of knowledge that could be used to assist, if that is what the residential neighborhood wants.

Commissioner Balch stated that he is of a similar opinion to those of Commissioners Piper and Ritter that this is an allowed use with no *per se* restrictions, and while he is disheartened that Mr. Schmitt did not reach out from the first meeting to this one with as many neighbors as had come, he understands the difficulty in doing having a conversation with others about something at your house or your residence. He indicated that he does not consult his neighbor every time he chooses to do something

with his home. He noted, however, that a second-story addition in a single-story residential neighborhood is obviously a little more egregious or different. He pointed out that the applicant tried to mitigate the views, which was the most significant issue at the first meeting. He stated that he thought the first home was nice and the second home was nice as well, and that the second-floor was modest. He indicated that he would support the application but is concerned about the two windows.

With respect to the two windows, Mr. Dolan stated that he does not think it is a big issue. He indicated that if opaque and inoperable windows is a requirement of the application, and if they ever were changed and staff heard about it, staff would make them change it back. He added that it can be made even stronger by including a condition to that effect so everybody is aware of it.

Commissioner Piper stated that she is still unclear as to which plan would be best.

Chair O'Connor stated that Ms. Bengtson preferred the original plan. He indicated that he would re-open the public hearing so Ms. Bengtson can clarify for the Commission what her preference was.

THE PUBLIC HEARING WAS RE-OPENED.

Ms. Bengtson stated that as Chair O'Connor mentioned, she would prefer to lose her view and save her privacy. She added that she would prefer the first submittal and that she appreciates the Commission's consideration of allowing her to speak again.

Chair O'Connor asked Ms. Bengtson if she would rather have a better view with the revised plan if the Commission modified the Conditions of Approval to make sure that the window could never be changed out to anything other than opaque.

Ms. Bengtson replied that she would select the original plan. She indicated that she has no assurance that unless she becomes the main person here to appear before the Commission to complain about the windows, that those windows will not be changed. She reiterated that her privacy is important because she will lose her pool, her backyard, and anything in her yard. She noted that her house is faced directly at that wall, so she would much prefer the original application. She then expressed her appreciation for the Commission's consideration.

Commissioner Balch noted that the application for consideration is not for the original design.

Chair O'Connor agreed that it is not the design before the Commission tonight.

Mr. Dolan noted that the applicant has submitted a revised plan and the Commission has the discretion to approve either one.

Chair O'Connor asked the applicant to come forward to indicate which is his preferred plan.

Mr. Schmitt stated that he needed five minutes to consult with his wife.

The Commission took a five-minute break at 8:25 p.m. and thereafter reconvened the regular meeting at 8:30 p.m.

Mr. Schmitt stated that they would prefer the first plans over the second plans.

THE PUBLIC HEARING WAS CLOSED.

Commissioner Ritter moved to approve Case P14-0829, with the original design submitted at the August 13, 2014 meeting, subject to the Conditions of Approval listed as Exhibit A of the November 12, 2014 staff report. Commissioner Balch seconded the motion.

ROLL CALL VOTE:

**AYES: Commissioners Balch, Piper, and Ritter
NOES: Commissioners Allen and O'Connor
ABSTAIN: None
RECUSED: None
ABSENT: None**

Resolution No. PC 2014-54 approving Case P14-0829 was entered and adopted as motioned.

- b. P14-0970/P14-1173, Young Ivy Academy
Applications at 5460 Sunol Boulevard, Suites 3 and 4 (Oak Hills Shopping Center): (1) to modify an existing Conditional Use Permit to convert a previously approved tutoring facility with a maximum of 30 students into a Heritage School with a maximum of 30 students and an outdoor playground area; and (2) for Design Review approval to remove eight existing parking spaces at the rear of the existing shopping center and construct a new 1,984 square-foot outdoor playground area enclosed with a new six-foot tall wrought iron fence. Zoning for the property is C-N (Neighborhood Commercial) District.**

This item was continued from the October 22, 2014 meeting.

Eric Luchini presented staff report and described the scope, layout, and key elements of the proposal.

Commissioner Balch inquired where the closest park to the school is located

Mr. Luchini replied that he was not certain.

Someone from the audience replied that Mission Park would be the closest.

Commissioner Balch noted that the children could potentially walk to it.

Mr. Luchini stated that it might pose some problems for safety and the operations of the school.

Chair O'Connor noted that it would mean taking 30 children all the way up Junipero Street and across Mission Drive.

THE PUBLIC HEARING WAS OPENED.

Dr. Mary Kenefick, representing Young Ivy Academy, first responded to two comments brought up earlier:

1. In connection with Kathy Ferreira's email that the school's two school buses are parked in the shopping center's parking lot, she stated that they have only one bus as they are in the process of selling the second one. She explained that there is a 30-day overlap to allow for inspections to ensure the bus functions in all the ways it should.
2. With respect to a neighborhood park, she stated that there is not a park close enough to make it possible for the children to use. She indicated that they do use public parks in the summertime when they can bus groups of children for a period of an hour-and-a-half to two hours to go away. She explained that the problem and the reason they desperately need the playground area is that during the school year, going to a public park is not an option due to time constraints as the children come at about 3:00 p.m.

Dr. Kenefick stated that Young Ivy Academy (YIA) was first approved in Pleasanton as a tutoring center and the request is to convert it to a Heritage School, for which staff has recommended approval. She noted that what they are asking for regarding the playground is a little unusual in context as it is not the norm, but that does not make it unreasonable, unworkable, undesirable, or inappropriate. She noted that the proposal is, in its context, an entirely reasonable, workable use of available space and will be a significant plus to the children who are students at YIA and to the community.

Dr. Kenefick stated that the Oakhill Shopping Center is a retail development serving local families with a bank, a full service grocery, Mountain Mike's Pizza, Subway, Taco Bell, and other venues of food, as well as a pet food vendor, a dance and music school, a martial arts academy, a Gymboree, and YIA, a nail parlor and needlepoint shop, and a dentist. She noted that most of the families locate in Pleasanton because it is a great place to raise children; the parents are upwardly mobile professionals who both work so they can afford Pleasanton and provide their children with the best education possible. She added that YIA, situated at this location in an informal network of child-centered services, is a godsend to these parents as well as to the dance school, the music school, and the martial arts school; to Subway and Raley's; and sometimes even to Taco Bell and the dentist, in a clearly discernible element of symbiosis.

Dr. Kenefick stated that YIA picks up students from local schools, transports them to the site, and provides classes in subjects such as math, language, and art, and helps with homework when needed. She added that if the students' parents wish, their children can go for classes at the martial arts academy, the music studio, or the dance school, with a YIA staff walking them over. She stated that when parents pick up their students between 5:00 p.m. and 6:30 p.m., they can pretty much relax thereafter because many

of their children's needs have already been met. She noted that as a testament to this, YIA serves several family groups with multiple children enrolled.

Dr. Kenefick stated that what is missing from this picture is this space where the young students can get some movement and fresh air for two hours a day as an antidote for the many hours in the day they spend indoors. She indicated that they hope to review the efficiency when they receive approval for this playground proposal. She noted that the proposal has already addressed many of the Code-required Planning issues that have arisen during the application process, and what is before the Commission is the fully developed plan for an attractive, safely fenced area with a play structure on the east side of the building, that will be effectively invisible to the majority of Oakhill Shopping Center's retail customers, with vines on the fence to screen the play area from neighborhood or parking lot view.

Dr. Kenefick stated that the issues that appear to deter approval are the location of the playground in a utility zone, noise, and safety. She noted that the amount of available space for the construction of the playground is more than adequate. She indicated that the issue of truck traffic is valid, but they have researched and studied this matter, and no business purpose of the utility zone would be infringed by the presence of the playground. She noted that only a few storefronts of the entities at YIA's end of the shopping center receive any backdoor truck deliveries, if at all: the pet supplies deliveries do not use this area, and Gymboree, Tai Kwon Do, the dentist, the music academy, and the needlepoint store do not get backdoor deliveries. She added that of those remaining, Subway gets one delivery from central distribution per week early in the morning through the front door; Mountain Mike's Pizza gets its daily delivery early in the morning also via the front door; Pak Mail does receive pickup and delivery visits from FedEx and UPS in the rear, but these are the same trucks that drive through our residential neighborhoods and, therefore, should not present a barrier to construction of the playground; and the only large tractor trailer truck deliveries using the utility zone come to Raley's Supermarket's rear loading dock at least 100 yards away, three times a week in the late afternoon between 5:00 p.m. and 6:00 p.m., at which time it might be possible that the playground would be in use, although by 5:00 p.m., most of the students are already indoors waiting for pick-up. She explained that due to the orientation of Raley's loading docks, the Raley's trucks enter from the north end of the shopping center and often exit the same way, although they occasionally exit the south end and would drive past the proposed playground site: three times a week for a matter of six to eight seconds each time, there could be a big truck passing by the playground between 5:00 p.m. and 6:00 p.m. She noted that tractor trailers are big and might look scary to some, but parts of those vehicles are in fact much safer than most. She agreed that the delivery schedule can change, but the general pattern is not likely to change very much.

Dr. Kenefick stated that students using the playground will be behind a six-foot tall steel fence and will be supervised at all times. She added that some might find the location of this play area inappropriate on the aesthetics, but factually where safety is concerned, students are in no more danger if they are in the playground when a truck comes to Raley's and if a truck driver chooses to use this exit, then they would be waiting for a public school bus where there is no fence and often no adult monitor. She pointed out that, therefore, to suggest that the volume type of truck traffic using the

utility corridor behind Oakhill requires that this application be denied is stretching the truth a bit.

With respect to the issue of noise, Dr. Kenefick stated that the nail parlor and the music school are the two entities nearest YIA, and the music school's practice rooms as well as the YIA classroom have been soundproofed so noise would not be an issue to the adjacent businesses.

Dr. Kenefick stated that local residences beyond the perimeter are likewise normally insulated and have dual-paned windows that would buffer sound from the exterior. She briefly addressed the letter from a neighbor, Exhibit D:

1. *Increased traffic congestion.* This is not a valid concern.
2. *Loss of parking lot on back of the shopping center (conversion to playground) and on the street.* This is also not a valid concern as the parking is not a significant issue.
3. *Loss of short-cut access to the shopping center and inconvenience for disabled.* The front of the shopping center is fully supplied with recently improved disabled access. She noted that there is no disabled access from the parking lot to the rear, whether or not because the Code does not require the provision of disabled access from a utility zone, but a ramp at the curb, if desired, could certainly be accomplished when the playground is constructed.
4. *Increased level of noise from playground.* As earlier mentioned, most Pleasanton homes are insulated and have dual-paned windows which effectively block most exterior sound; additionally, the playground will be used by limited numbers of students for limited periods of time.
5. *Possibility of increased neighborhood crime activities as an place with young children is a target for child abuser.* This is not really valid issue. While there are sexual predators in the world, it would not be a concern at all in a supervised environment

In summary, Dr. Kenefick stated that this is not an ill-conceived unworkable and inappropriate undesirable issue to the Oakhill Shopping Center. She acknowledged that neither is it in all ways ideal, but considered in its context, it is a matter of common sense which creates a safely fence zoned for supervised recreation for the children and makes fresh air and movement part of their daily afternoon routine, encouraging focus in the classroom and promoting exercise and health. She indicated that she is not suggesting that there are no valid concerns here, but to block approval of this play area gives disproportionate weight and does these children a disservice. She added that there is or ought to be some concern for the greater good for the greater number and some acceptance of what is possible here.

Faith Fisher, a Pleasanton resident for seven years, a homeowner for six years, and a YIA parent for five years, stated that her daughter was at Valley View Elementary School in a dual immersion program, and it was very helpful to have a facility like YIA nearby to support that type of program. She noted that YIA has been a valuable organization to her daughter as it has a lot of technology, and this is good for a 21st-century child. She added that the kind of mobility and activity in her child's life is also important, and so it was very encouraging that YIA was considering adding a playground to take a more holistic approach to developing both the child's mind and

body. She stated that she greatly represents a number of Pleasanton residents with young elementary school-aged children and asked the Commission to consider that when making its decision.

THE PUBLIC HEARING WAS CLOSED.

Commissioner Allen stated that her concern is the increased level of noise near the playground and asked staff what the level of noise impacts would be in a worst case scenario for residents who are outside their homes.

Mr. Luchini stated that this would be going from an area at the rear of the shopping center that literally has no outdoor activity beyond the limited deliveries as mentioned earlier to an area that now has 16 children at one time for two to four hours, running around, yelling and screaming, enjoying their recreational time.

Commissioner Allen inquired how far away the homes are from the proposed playground and how many homes there are.

Mr. Luchini replied that the distance would be approximately the width of a drive aisle, roughly about 45 feet. He added that there is a whole row of homes along that rear property line of the shopping center, and judging from the site map, there are approximately ten houses.

Chair O'Connor inquired if staff thinks the noise would be heard all the way out to the 10th home.

Mr. Luchini replied that it would most likely not be heard. He suggested that two or three would be the most impacted and potentially some of the residents across Junipero Street to the south.

Commissioner Allen inquired who were sent notices for this proposal.

Mr. Luchini replied that notification cards were sent to all property owners and residents within a 1,000-foot radius from the entire perimeter of the shopping center.

Chair O'Connor inquired, for clarification, that all of those ten homes would have been noticed.

Mr. Luchini said yes.

Commissioner Allen noted that a letter from one neighbor was received. She inquired how many letters were received.

Mr. Luchini said one.

Chair O'Connor inquired if the one letter was from one of the ten homes.

Mr. Luchini replied that the person did not identify his address in his email but indicated that he lives right across from YIA, which could be to the south across Junipero Street.

Commissioner Ritter inquired if the applicant would still want to stay in this location if the Commission approved the Heritage School without the playground, or if the playground is needed.

Mr. Luchini replied that the question would be better directed to the applicant to address.

THE PUBLIC HEARING WAS RE-OPENED.

Dr. Kenefick replied that it is a tough question to answer. She stated that for some time, YIA has looked for an alternate location, partly because they do not have any outdoor space that is usable, and there simply is nothing available that is within their financial range. She noted that this is a small business so the options are very limited.

THE PUBLIC HEARING WAS CLOSED.

Chair O'Connor asked staff if the real reason the findings cannot be made on the outdoor play area is mostly noise or more about the safety with the truck traffic.

Mr. Luchini replied that it would be all the issues together. He indicated that if the Commission is asking staff to give weight to one, the design and compatibility, given the potential safety issues, would probably outweigh some of the noise concerns; however, collectively as a whole, staff feels all of those issues have some weight as to why the findings cannot be made.

Chair O'Connor inquired if there really is much of a safety issue, knowing that an 18-wheeler will be coming by three or four times a week after 5:00 p.m., or is the issue because that could change in the future if Raley's sells and the delivery schedule for the new company changes.

Mr. Luchini replied that it would be important to note that the area itself is not limited specifically to delivery traffic. He indicated that there is parking in the rear of the shopping center, so there are motorists coming and going throughout the day in varying levels of traffic; it is a combination of both trucks and normal patrons of the shopping center, employees, and things of that nature.

Chair O'Connor inquired if vehicular traffic is a pass-through or if there is actually an access from the back of the shopping center.

Mr. Luchini replied that those who park at the rear would have to walk to the southern end of the shopping center and pass through, or go around to the north along Mission Drive as there is no pass-through to the shopping center on the north end.

Commissioner Balch noted from the site map that there's a breezeway.

Chair O'Connor noted that someone might park in the back to come through that breezeway to the front doors of the few stores at southern "L" part of the shopping

center, but those going to Raley's would certainly not park in the back as it would be too big of a walk.

Commissioner Balch noted that in the Vintage Hills Shopping Center, there is a little Montessori school that has an area in the back similar to this. He asked staff to explain that situation, such as if staff learned some unforeseen issues from there.

Mr. Dolan replied that there has been an evolution from staff's position on this matter, and staff reconsidered whether or not they would want to put children right next to a truck going by, protected by a steel fence that would break or collapse if the truck ran off into it.

Commissioner Balch stated that fairly recently, he has actually seen a playground fence like this snap from a vehicle going through it at the Quarry Lane School in the Valley Business Park. He noted that the car plowed through the fence and fortunately, the playground was empty as it was after hours.

Chair O'Connor inquired, without actually seeing the length of the buildout of the play area, if the play area fence is contiguous all the way to an entrance or exit from the school facility or if someone will actually walk the children out to that area.

Mr. Luchini replied that there is no direct connection between the playground and the school, so the students would be physically walked from Suites 3 and 4 through the breezeway to the enclosed playground.

Chair O'Connor stated that as far as the fence collapsing, other protections could be added such as bollards or cement-filled pipes spaced so far apart that a truck would have to plow through. He indicated, however, that he did not know how easily those come out.

Mr. Luchini stated that staff has made recommendations in the staff report, but the additional considerations are certainly at the purview of the Commission.

Commissioner Ritter inquired if the neighbors along the east side ever complain about noise from trucks going up and down that alley.

Mr. Luchini replied no, not to his knowledge.

Commissioner Ritter noted that it is interesting that no one from the neighborhood showed up tonight.

Chair O'Connor commented that he assumes 18-wheeler diesel trucks make more noise than children, although it is not as constant and not there before hours.

Commissioner Balch stated that he finds it very interesting and astounding that no one is present from the neighborhood. He indicated that he would totally understand if staff gets a lot of complaints on the back side if the Commission approved a school playground at that location. He continued that his initial difficulty with where the playground is proposed to be located is the fact that vehicles will be making a right turn

into the rear of the shopping center coming down from Junipero Street and would be leaning right towards the fence as they go into the rear of the lot, so it is a bit difficult, without a doubt. He added that there is also a pass-through access in that general area.

Chair O'Connor commented that for argument's sake, the Commission could condition some bollards going in that would wreck that car before it hits the fence.

Commissioner Balch agreed that those would have to be required for the playground if the Commission approves the playground.

Chair O'Connor added, again only for argument's sake, that striped white lines with "Keep out of this area" could be put in, but he is not saying that this is the best place to put in a playground.

Commissioner Allen noted that most of the safety issue could be resolved with a strong steel fence or some support structure. She stated that in relation to noise, she was surprised that no one from the neighborhood showed up, and based on staff's input to the Commission, it sounds like people will notice in the afternoon when kids are screaming. She indicated that she personally had a situation where some new people moved into a house in Napa down from her place, and they have children on a trampoline which was driving her crazy, as it was a whole different environment she was not used to. She stated that her tendency would be to work with this if it is workable; however, it sounds like there are these two challenging issues which may not be an issue on its own but together are not enough to make her get excited about putting a playground in a shopping center and thinking outside of the box.

Chair O'Connor noted that while not all ten houses to the rear would be within earshot of the noise, there would be about five or six there, and probably another three or four more homes across from Junipero Street that could be affected.

Commissioner Piper inquired, from a noise perspective, if staff is concerned that there will be an issue later on, as there clearly is none at this time.

Mr. Luchini replied that it would be a fair assumption, considering that a fairly quiet atmosphere would be changed to an atmosphere with children on a daily basis.

Commissioner Balch stated that his neighbor bought a motorcycle and he can hear him when he leaves and when he gets home, but that is only twice a day. He noted that hearing delivery trucks go by is completely different from a sustained playground.

Chair O'Connor inquired if it would be an option in a commercial area to limit the hours the playground could be used. He noted that while everybody may be out of the house all day long, there could also be stay-at-home parents and young children. He indicated that delivery trucks come between 5:00 p.m. and 6:00 p.m., and the use of the playground could be limited to no later than 4:00 p.m. or thereabout.

Commissioner Balch stated that the issue with that is that delivery trucks are in a use that allows them hours no matter what, maybe 24 hours, because they were there first.

He indicated that the suggestion is to limit the school playground hours based on the delivery truck schedule, but that could change.

Chair O'Connor stated that there are a lot of challenges in limiting the hours, especially since the children come in between 2:30 p.m. and 3:00 p.m., and would want to have some access to outdoor play up until 6:00 p.m.

Commissioner Ritter stated that he is 50-50 on this because he wants to support the business, and looking at what it is set up for, it goes back to the zoning. He indicated that he is most concerned about the noise. He noted that there are still a lot of homes along that strip on Junipero Street that understand trucks and cars, but may not understand screaming kids. He stated that he wants to support the staff's recommendation just because of the noise, but he is struggling with it.

Commissioner Balch stated that he would have preferred staff to opine further on lessons learned from the existing facility at the Vintage Hills Shopping Center, given that we have one at that shopping center and staff is now changing their opinion, which he believes must be for a reason. He indicated that he would probably be following suit with Commissioner Ritter.

Commissioner Allen reiterated that the noise is the biggest issue for her because based on her personal experience, it changed the quality of her life.

Chair O'Connor agreed that in terms of safety, the Commission could put things in place such as bollards that would provide more peace of mind. He noted, however, that it is the noise that the Commission is hearing about tonight. He indicated that homes are very close, and the noise would depend on how many children would be out there and what they're playing.

Commissioner Piper stated that she understands the objections and also support staff's recommendation; but on the other end of the spectrum, she also supports the need for health and activity and appreciate that concept very much.

Commissioner Ritter moved to: (1) make the required Conditional Use Permit findings for that part of Case P14-0907, the Conditional Use Permit modification relating to the Heritage School, as listed in the staff report, and to approve that part of the Conditional Use Permit modification relating to the Heritage School, subject to the Conditions of Approval listed in Exhibit A of the staff report, with the addition of a new condition listed in the staff memo dated November 12, 2014, requiring all facility vehicles to be parked/stored within the existing parking spaces at the rear of the shopping center; (2) determine that the Conditional Use Permit findings for that part of Case P14-0907, the Conditional Use Permit modification relating to the outdoor playground area, cannot be made as described in the staff report and to deny that part of the Conditional Use Permit modification relating to the outdoor playground area; and (3) deny Case P14-1173, the Design Review application for the proposed outdoor playground area.

Commissioner Allen seconded the motion.

ROLL CALL VOTE:

AYES: Commissioners Allen, Balch, O'Connor, Piper, and Ritter
NOES: None
ABSTAIN: None
RECUSED: None
ABSENT: None

Resolution No. PC 2014-55 approving that part of Case P14-0970, the Conditional Use Permit modification relating to the Heritage School, and Resolution No. PC-2014-56 denying that part of Case P14-0970, the Conditional Use Permit modification relating to the outdoor playground area and denying Case P14-1173, the Design Review for the outdoor playground area, were entered and adopted as motioned.

7. MATTERS INITIATED BY COMMISSION MEMBERS

Michael and Darlene Miller and the Masonic Lodge

Chair O'Connor inquired if any of the Commissioners wished to discuss the Millers' request tonight. He further inquired how many of the Commissioners had met with the Millers.

Commissioner Piper stated that she talked to the Millers.

Commissioner Ritter indicated that he talked to Mr. Miller.

Commissioner Allen stated she was out of town.

Julie Harryman advised that because this item was not agendized, the Commission's discussion should be limited to whether or not they wish to have it agendized.

Commissioner Ritter noted that Chair O'Connor was on the Commission when this matter was first brought up and asked him what his thoughts were before the new Commissioners came on board.

Chair O'Connor stated that this issue has been going on for a long time, and trying to work out a compromise has had no success. He indicated that he thinks the Commission should consider agendizing the matter, but he does not know if he has support for that from the other Commissioners. He noted that at the last meeting, Mr. Dolan had offered to sit down with any of the Commissioners for background information on this issue prior to meeting with the Millers.

Commissioner Ritter inquired if it can be agendized as a discussion.

Mr. Dolan replied that if the Commission is going to vote to put this on the agenda, it should start with a discussion, and the Commission can then decide at that point if there is a direction.

Chair O'Connor verified that at the last meeting, Mr. Dolan explained that if a discussion were agendaized, both the Millers and the Masons would be notified and invited to attend; staff will prepare a report first that would provide some background information, after which the discussion would be opened to the public.

Mr. Dolan confirmed that staff would want to provide background for discussion in a staff report, and there may or may not be recommendations in the staff report. He indicated that staff will probably provide the Commission with some options regarding what the Commission could do with that information. He added that the Millers and the Masons would be invited to the meeting.

Chair O'Connor inquired if the staff report for the discussion would contain information that would be the same as the staff report for a review of the Conditional Use Permit, should that be agendaized.

Ms. Harryman replied that the Commission would have staff's information but would not have the benefit of the Masons and the Millers.

Chair O'Connor noted that the Masons and the Millers would be present.

Ms. Harryman said yes, but added that staff might not have the opportunity to respond to whatever the Commission is going to hear.

Mr. Dolan asked the Commission what the agenda item would be if it is not a discussion.

Chair O'Connor replied that if it was not a discussion, then it would be to review the Conditional Use Permit (CUP) and if the Masons are adhering to the Conditions of Approval.

Commissioner Allen added that it would be the enforcement of the CUP.

Chair O'Connor added that it could be the whole spectrum, including whether the Masons are following the CUP, whether the Commission could entice the Masons to follow the CUP, and whether the Commission should revoke the CUP. He indicated that if staff will have to put together a staff report and provide the information for a discussion, he is not sure what would be new the second time around.

Mr. Dolan replied that the likelihood is that whatever happens, the direction would probably head towards a request for an amendment to the CUP, and that will be the action.

Chair O'Connor inquired if this would be coming from the discussion as opposed to a review of the CUP.

Mr. Dolan explained that this has been part of the dialogue for five years now, and if the determination is made that a compromise is not going to work and there will be some action taken against the Masons, the Masons will immediately file an application to amend the CUP.

Commissioner Piper inquired if that application would probably be approved.

Mr. Dolan replied that the Commission would be making that decision.

Chair O'Connor inquired if that would come to the Commission at the same time that the Commission is reviewing the CUP or after the fact.

Mr. Dolan replied that it would make no sense to belabor the issues in the old CUP if there is an application for a new CUP where the rules might change entirely.

Chair O'Connor asked Mr. Dolan if he thought the Masons would submit the application before the hearing.

Mr. Dolan replied that he is certain of it.

Chair O'Connor inquired if the Commission could consider all that at the same time.

Mr. Dolan replied that he thinks the Commission needs to start with a discussion and let itself shake itself out. He indicated that he does not think the Commission can tackle it all in one meeting.

Chair O'Connor inquired if it would be the same as a Work Session.

Mr. Dolan replied that it is just a discussion, and there would be no action: the Commission would get an idea of where it stands, and the Commission would hear from both parties. He indicated that if the Commission seemed to be of a consensus that some enforcement needed to be done, he strongly suspects that would prompt an application for an amendment to the CUP.

Chair O'Connor inquired, assuming the Commission had a discussion, and after that discussion, decided it wanted to agendize a review of the CUP, which would in turn prompt the submittal of an application to change those Conditions of Approval, if the Commission would be able to talk about all of that at a follow-up meeting.

Mr. Dolan replied that the Commission cannot talk about one without talking about the other. He indicated that the action before the Commission that would be most pressing is what to do with the CUP application.

Chair O'Connor inquired if these would be two separate items.

Mr. Dolan replied that the reconsideration of the old CUP would have to be agendized because the Commission would answer all the questions with its answer to the new CUP.

Chair O'Connor asked Mr. Dolan if what he is saying is that both items would be considered at the same time.

Mr. Dolan said yes, essentially; the dialogue would all be in one night with all issues on the table.

Commissioner Balch noted that it might put an end to the discussion.

Chair O'Connor stated that sometimes when one party in the audience gets a feel that they will win or lose this one, they get the impetus to come back with something else such as a compromise, even if it has not worked for five years.

Commissioner Piper commented that she did not think so in this case.

Commissioner Ritter commented that if this is not agendized, the Commission would just hear more about it, either from one or both sides.

Chair O'Connor noted that the Commission would hear for sure from one side.

Commissioner Piper inquired if the only way this can come before the Commission is for the Commission to move to agendize it, and if the parties cannot apply to do so.

Commissioner Ritter stated that the Masons could submit a CUP right now if they wanted to, but it appears they do not want to.

Commissioner Piper commented that she cannot imagine why they have not done that.

Chair O'Connor stated that the Masons like it the way it is. He indicated that he just thought it would save some staff time from doing two reports.

Mr. Dolan replied that he would love to save staff time, but he does not see how the Commission can do it without a two-step process.

Chair O'Connor stated that he thinks it would be beneficial to try to get this off the table if the parties are coming back after five to eight years. He added that the complaint that is going on is enough at least to warrant having a conversation.

Commissioner Ritter inquired if the Millers are threatening that the City is not following the rules.

Chair O'Connor replied that they have been saying that for a long time. He asked the Commissioners if there is support for agendizing a discussion about the Masons' CUP.

Commissioner Allen stated that she has not met with Mr. Dolan yet, and absent hearing it, she is open to doing that, although she would rather hear that before making a decision.

Commissioner Balch stated that he thinks it is important, in the government and the way the system works, that anyone who wants to be heard should be given an opportunity to be heard. He indicated that he is supporting to agendize it.

Commissioner Piper stated that she would support it because she understands that the rules are not currently being followed.

Commissioner Ritter stated that he thinks it is worth a discussion to get it done.

Commissioner Allen stated that she supports it based on the discussion of those who have been more involved with it and because they deserve to be heard, and because it sounds like the rules are not being followed and the Commission should be aware of that and deal with it.

Chair O'Connor noted that it is unanimous that the Commission would like to agendaize a discussion on the CUP for the Masons.

Mr. Dolan advised that tonight's meeting is the only meeting for November and that staff will be looking at the first meeting in December, depending on the number of items already on that agenda and on whether requests are received from either of the parties that that date will not work. He indicated that staff will work around that, but it will be coming up.

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

- **Future Planning Calendar**

Allen: Just a question on future dates for December meetings.

Luchini: December 10th is the first one and I think that's it for December.

a. Actions of the City Council

No discussion was held or action taken.

b. Actions of the Zoning Administrator

No discussion was held or action taken.

c. Matters for Commission's Information

East Pleasanton Specific Plan

Commissioner Ritter noted that there will be an East Side Specific Plan (EPSP) Task Force meeting in December. He asked Mr. Dolan if the Environmental Impact Report (EIR) will be presented then.

Mr. Dolan replied that the December EPSP Task Force meeting will be a presentation of the revised Draft Specific Plan that was prepared when the base plan was changed; the old base plan was taken out and replaced by a new base plan. He indicated that the transition is not dramatically different from what the Task Force has seen before, other than the replacement of the alternative. He added that staff is still trying to get the presentation by the Pleasanton Unified School District requested some time ago about

its demographic information to specifically try to get a better feel for whether or not a new school is or is not truly needed in the area.

Chair O'Connor inquired if the term "base plan" the same as "preferred plan."

Mr. Dolan said yes. He explained that some members of the Task Force felt that "preferred" was loaded.

9. ADJOURNMENT

Chair O'Connor adjourned the Planning Commission meeting at 9:37 p.m.

Respectfully submitted,

Adam Weinstein
Secretary