



## PLANNING COMMISSION MEETING MINUTES

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

**APPROVED**

**Wednesday, March 28, 2012**

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

### **CALL TO ORDER**

The Planning Commission Meeting of March 28, 2012, was called to order at 7:00 p.m. by Chair Jerry Pentin.

**PLEDGE OF ALLEGIANCE:** The Pledge of Allegiance was led by Commissioner Pearce.

### **1. ROLL CALL**

Staff Members Present: Brian Dolan, Community Development Director; Janice Stern, Planning Manager; Larissa Seto, Assistant City Attorney; Steve Otto, Senior Planner; Rosalind Rondash, Associate Planner; Sgt. Kurt Schlehuder, Police Department; and Maria L. Hoey, Recording Secretary

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

Commissioners Absent: None

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

There were no Minutes for consideration.

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

There were no members of the audience wishing to address the Planning Commission.

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

Janice Stern advised that there were no revisions or omissions to the Agenda.

5. **CONSENT CALENDAR**

There were no Consent Calendar items for consideration.

6. **PUBLIC HEARINGS AND OTHER MATTERS**

- a. **P12-0308, Rick Wilcox, Appellant (Ramon Rivas, Applicant), #1 Cash for Gold**  
**Appeal of the Zoning Administrator's approval of a Zoning Certificate to operate a gold-buying business at 5540 Springdale Avenue, Suite C. Zoning for the property is C-R(p) (Regional Commercial [Peripheral Area]) District.**

Rosalind Rondash presented the staff report and described the scope and key elements of the application.

Commissioner Blank stated that an unsigned statement was placed on the Commissioners' dais this evening and inquired when staff received this document.

Ms. Rondash replied that staff received it just prior to the beginning of tonight's meeting. She added that the business owner was going to speak tonight and wanted to make sure the Commissioners had a copy of his statement.

Commissioner Olson noted that in the statement just provided the Commission, the applicant indicated that he opened locations in Milpitas, Newark, and San Francisco. He inquired if the Police Department, when they checked out this application, also checked out these other locations operated by the applicant to see if there were incidences.

Ms. Rondash deferred to the Police Department (PD) to respond to the question.

Sgt. Kurt Schlehuber stated that he currently supervises the investigation and issuance of second-hand dealer licenses. He indicated that the PD did not check the other businesses operated by the applicant. He explained that second-hand dealers are required by the Department of Justice (DOJ) to obtain a license, and the PD's involvement is basically limited to facilitating the paperwork aspect of the process,

collecting the application and the fee. He continued that the applicant is required to submit a LiveScan finger-printing and a background check, and as long as the applicant has not been involved in certain crimes such as possession of stolen property or theft, the DOJ would issue a license and mail it to the PD, who would then give the license to the applicant. He added that the PD does not do any type of investigation or any sort of checks on how the businesses are run in other jurisdictions, and it does not have the authority to deny the issuance of the license, which lies solely with the DOJ.

Commissioner Olson inquired if there were any problems, they would have shown up at the DOJ.

Sgt. Schlehuber said yes, but only if there had been an arrest and a conviction. He noted that the current process would not uncover any issues or problems in another jurisdiction that did not rise to that level.

Chair Pentin requested clarification that each license is for each jurisdiction or for each area only, and is not a blanket license for operating in any location.

Sgt. Schlehuber replied that was correct; the license is specific to a location.

Commissioner Narum noted that several jewelry stores on Main Street advertise that they buy gold. She inquired if these stores are required to have a license.

Sgt. Schlehuber said yes. He noted that this is a new business model that began a couple of years ago and became pretty lucrative with the price of gold being what it is, and a lot of the jewelry stores have gotten into it. He stated that the PD has encountered some stores that started doing this business but were not in compliance with the law, so Detective Keith Batt, who currently handles this portion of enforcement and issuing the license, has gone to some of the stores and inquired whether or not they have obtained a license and has brought them in compliance. He added, however, that the PD has not put in the effort to check whether every store in the City is in compliance, but PD will start putting this process in place, starting with an informational campaign to let stores know that they are required to obtain these licenses and then helping the business obtain the license. He noted that once these stores are in compliance, the PD would work on any enforcement issues that might come up.

Chair Pentin inquired if the appellant is also in the same business and if he runs a local business.

Ms. Stern replied that it is her understanding that the appellant does have the same business in town.

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

Ms. Rondash indicated that the appellant is not present.

Ramon Rivas, Applicant, read his statement into the record:

*“Good evening. My name is Ramon Rivas. I have been in the cash-for-gold business since 2009 when I opened in a location in the City of Newark. Later on, I opened in more locations in the City of Milpitas, City of Miami, and City of San Francisco. This type of business is regulated by the Department of Justice and enforced by the Police Department in the city where the business is located. The way the Police Department enforces the rules on the business is this: every customer must provide us with a valid state ID and be 18 years or older. We are required to fill out a form which includes a right thumb fingerprint from the customer. It is mandatory for us to provide the Police Department with the original copy of this report for them to verify if there is any suspicious activity, stolen jewelry, and double-check if the customer has any record involved. By law, we also have to hold the jewelry we purchase for 30 days. In all these years in buying jewelry, I have never got a complaint either from a customer or from the Police Department. We have always complied with all the rules required by law.*

*“Richard Wilcox, who has presented this appeal, is a business partner of Tri-Valley Cash for Gold, which owns cash-for-gold stores, with the nearest store being located inside Stoneridge Mall close to us. Mr. Wilcox is trying to monopolize the business; that is against the country’s belief. Mr. Wilcox and I held a conversation at the Mall this past March 1<sup>st</sup>, 2012, where he proposed that my business will take away business from his. He is trying to manipulate how I handle and advertise my business. Mr. Wilcox has also wanted to make my business stop day by day for six months by appealing approval by the City of Pleasanton. This way, he can disable my business and affect my finances and operations, as I have to pay the lease every month without receiving income in the meantime.*

*“I do not find it lawful or valid to allow this individual and all his businesses to manipulate the system and the Commission in order to benefit himself and disable other businesses from offering the public other choices to pick from where they sell the merchandise. I hope the Commission takes this into consideration that this appeal has a selfish reason behind it, and that Richard Wilcox is only attempting to eliminate any competition in the City of Pleasanton and not to regulate this business. My business has an impeccable record and we are honest and professional people trying to make a living in the area.*

*“Thank you very much for your time, and I hope we can resolve this issue immediately so we can start operating as soon as possible.”*

**THE PUBLIC HEARING WAS CLOSED.**

**Commissioner Blank moved to deny the appeal, therefore upholding the Zoning Administrator’s determination that gold-buying businesses are similar to jewelry stores, and, therefore, the Zoning Certificate (P12-0308) was properly issued.**

**Commissioner Pearce seconded the motion.**

**ROLL CALL VOTE:**

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

Resolution No. PC-2012-18 denying the appeal, thereby upholding the Zoning Administrator's approval of the Zoning Certificate, as filed under Case P12-0308, was entered and adopted as motioned.

**b. PUD-86, James Tong**

**Work Session to review and receive comments on applications for General Plan Amendment and Planned Unit Development (PUD) rezoning and development plan to construct 10 custom homes and related improvements on the approximately 562-acre Lin property located at 1400 Hearst Drive, generally located east of the present terminus of Hearst Drive. Zoning for the property is Planned Unit Development-Rural Density Residential/Open Space (PUD-RDR/OS) District.**

Commissioner Blank recused himself due to a conflict of interest because he lives in close proximity to the project site. He added that he would defer to his colleague, Commissioner Pearce, to report on the Historic Preservation Task Force to the Commission later this evening.

Steve Otto presented the staff report and described the site, layout, scope, and key elements of the proposed project.

Commissioner Narum asked Mr. Otto to go back to the slide showing the two differing measurements of the height of the houses and inquired if either measurement could be used on the height measurement diagram.

Mr. Otto said yes. He explained that it would be a 30-foot height, and if the house were stepped, it would not be measured from the lowest to the highest point of the structure, but the lower part of the house would be measured, and then the upper part of the house, independently of each other in terms of height.

Commissioner Narum inquired if staff would not be concerned about the measurement on the left in terms of the view impact.

Mr. Otto replied that it would depend on which part of the house is being looked at: if the view of the house was coming from the right side of the diagram, there would potentially be a larger height; but there is a benefit in having that allowance for

measuring the different pads in that it would not penalize one for splitting a pad versus doing a flat-pad grading which could potentially result in more grading impacts in the house, looking less natural on the slope bank. He noted that he included in the staff report a comparison of what the prior project had as far as the height was concerned, which had more of a parallel measurement here, so it was 30 feet for the lower and 30 feet for the higher, and if a line were basically drawn in between there, all of the structure would have to be below that in a parallel line to the grade.

Commissioner Olson requested further clarification, noting that if, on the left under "proposed," the view is off to the right, people down below would be looking from the right there, and they would be seeing a structure greater than 30 feet high.

Mr. Otto replied that was correct, if the structure were measured from the bottom to the top.

Commissioner Olson inquired if that does not then negate the requirement. He noted that it would be equivalent to having it both ways.

Brian Dolan stated that it would depend on from where it is being viewed. He explained that the applicant is asking for a measurement this time around that is more generous than that of the previous application.

Commissioner Narum inquired if this is one of the discussion questions.

Mr. Otto said yes.

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

Connie Goldade, Community Design and Architecture, stated that she was a member of the design team for Oak Grove and indicated that since Mr. Otto did a good job at explaining the project, she would just highlight a few of the project items that were part of the discussion topics before the Commission tonight.

First, with respect to the zoning for the property, Ms. Goldade stated that she believed it is important to keep the agricultural uses on the property in addition to the residential uses. She noted that they based the house sites and lot locations on a lot of the planning that has been done to date, as well as on the CEQA analysis in order to limit any negative impacts as much as possible. Regarding refining the house sizes, Ms. Goldade indicated that they think there really should be no limit on the house sizes, and the City's design review process and the design guidelines to be adopted as part of the project would guide the design control. She added that if there had to be a limit to the house sizes, 12,500 square feet would be the house size with an additional square footage allowed for garages for up to 10 cars and accessory structures, such as secondary residential structures, as allowed by State law that would be no more than 1,200 square feet. Regarding the height, Ms. Goldade stated that the idea is that it was not just for structures on hillsides but also for the flat pad units to try and limit the

grading; however, they are asking for an exception for agricultural structures to be higher than 30 feet to allow for barns and stables.

Second, regarding security gates, Ms. Goldade stated that there is already a significant trespassing problem on the property, and they think it is really important to have a security gate for the project. She noted that the regional trail mentioned by Mr. Otto is as proposed in the General Plan and is basically the same alignment as what was proposed in the previous project.

And finally, Ms. Goldade stated that they think the biological discussion should be held and weighed on and not pre-judge any of the studies that are currently underway as part of the CEQA process.

Commissioner Narum inquired if any of the ten lots will be restricted to a single-story house.

Ms. Goldade replied that right now, they are proposing that there be a development envelope to build on, so there is no proposal for that at this time. She added that it would depend on what comes out of the CEQA process.

Commissioner Narum requested clarification that there is no restriction and that they are not proposing to have a restriction for single-story on any of the lots.

Ms. Goldade said no.

Commissioner O'Connor asked Ms. Goldade to repeat what they are asking to be outside of the current proposed guidelines, and how many square feet of an accessory structure they are talking about.

Ms. Goldade replied that initially, they did not think there should be a square footage limitation for the project, but if there had to be one, it would be 12,500 square feet for the primary unit and 1,200 square feet for each residential accessory structure beyond that, which could include a garage structure of up to ten cars or a secondary unit as allowed under State law or any other type of accessory structure.

Commissioner O'Connor commented that a 1,200-square-foot garage would not accommodate ten cars.

Ms. Goldade explained that it would depend on how it is laid out; for example, it could be a tandem garage or a garage with a couple of doors that are laid out like a courtyard system. She noted that Commissioner O'Connor might be thinking about a basement garage where there are drive aisle and garage stalls on either side.

Commissioner O'Connor stated that a standard garage is typically about 200-square feet per car, unless it is a very small car; therefore, if they are proposing a ten-car garage, then it would have to be more than 1,200 square feet.

Ms. Goldade replied that could be but that they are willing to say that it be 1,200 square feet.

Commissioner Narum commented that she believed the staff report stated that the garage would be 800 square feet, and anything over that would be counted against the 12,500 square feet allotted for the primary resident.

Mr. Otto replied that the guidelines, as proposed, would exclude up to 800 square feet of garage; however, the applicant is proposing to use something different than what was in the guidelines. He noted that this is also the first time staff is hearing about it.

Commissioner Narum noted that stated differently, her understanding from the staff report is that the house would be up to 12,500 square feet, and in addition, they could have an 800-square-foot garage; if they desired a bigger garage, the additional square footage in excess of the 800 square feet would count against the 12,500 square feet house. She asked staff if that was correct.

Mr. Otto said yes.

Chair Pentin asked Ms. Goldade if they are asking that that not be the case.

Ms. Goldade said yes.

Commissioner Pearce stated that she wanted to make sure she understood the comment about the second units and asked Ms. Goldade if they are requesting that second units be allowed up to 1,200 square feet.

Ms. Goldade said yes. She added that it would be in addition to the 12,500-square-foot house.

Commissioner Pearce asked Ms. Goldade if that was instead of what staff has mentioned, which is up to 20 percent of the primary home's floor area.

Ms. Goldade said yes.

Commissioner Pearce inquired how tall a barn is and if they would be like silos.

Ms. Goldade replied that they want to have the flexibility for the agricultural uses of the site as they do not know who is going to buy the properties and what they are planning to develop. She noted that it will not be a free-for-all; it will fall under the jurisdiction of the City and would have to comply with the City's Design Review process, so there will be City staff input into what that can be.

Commissioner O'Connor asked Ms. Goldade what she was referring to when she said 1,200-square-foot accessory structure



Ms. Goldade replied that she was referring to a residential accessory structure or a garage.

Commissioner O'Connor asked if they have a limitation on the size of the barn.

Ms. Goldade said no.

Commissioner O'Connor asked if they have a suggestion or limitation on the number of accessory structures.

Ms. Goldade said no. She added that residential accessory structures are proposed to be within the development envelopes and so that will in fact limit what can be put on the property.

Lee Fulton stated that the City has been here before and hoped that it will not make the same mistake again of passing a plan that is guaranteed to promote controversy and cost the City lots of wasted dollars. He noted that it is inarguable that the citizens value the beauty of the ridge tops surrounding the City and that this was made abundantly clear in the General Plan and through numerous times at the polls. He pointed out that the objection to the current and past plans was not whether homes were to be built on these hills but the placement of the building pads.

Mr. Fulton stated that the worst of the current plan is the proposed Lot 10, which is the eastern sunrise horizon for hundreds of existing homes. He indicated that with the exception of the "Hayward Hotel" on Santos Ranch Road, it would be viewed by more homes on their horizon than any other home in Pleasanton. He noted that there are no homes in Pleasanton that are built on horizons, and whatever is built on Lot 10 will be silhouetted against the sky for hundreds of locations throughout Pleasanton. He added that this building site needs to be relocated, and there are dozens of other sites on the 562 acres that would be infinitely more acceptable. He pointed out that now is the time to make that decision; not when the whole project is approved, when whoever buys the property will have to argue with hundreds of residents and have the project go to the polls again. He concluded that it would be nice if the applicant truly worked with the neighbors to come up with a workable project, unlike with the past two proposals.

Allen Roberts stated that he thinks it would be great if this process could provide some guidance to staff and the applicant to avoid the controversial parts of the previous two projects. He indicated that he believes something could be built on this parcel that would be acceptable to the community and neighborhood, but he did not think it is there yet. He added that there are things that were lightning rods in the past projects and are still lightning rods in this project, and the same mistakes are being repeated.

Mr. Roberts stated that there are two things on the Work Session topics that he would like to talk about: (1) House sites. He noted that this was a lightning rod in the last project where the only view of structures on this parcel are downslope views; and what

is being proposed now are massive structures that would look taller than 50 feet, even if they are cut through and located 30 feet off-site. He stated that it appears the process being followed is to approve the project and these building envelopes; people are then going to buy them and try to build a house on them, only to find out that they are unacceptable to the neighborhood and that there is nothing anybody can do about it at that point. He added that he thinks what should be done is determine the visual impact before this project gets approved so that future homeowners do not have one big fight in front of them. He requested staff and the Commission to give guidance to the applicant to provide a visual analysis on the proposed lots prior to project approval.

(2) Emergency Vehicle Access (EVA). He stated that the last time this project came to the Planning Commission, one of the reasons the Commission decided to turn this project down was because of the EVA issue; now this project has come forward with 10 lots but no EVA. He noted that Fire Department officials did a site tour and indicated that there has to be an egress out of this site; the Wildland Fire Report recommended that the access be through Grey Eagle Court, referencing it as being an all-weather surface, maximum grade of 15 percent, and 20 feet wide. He stated that this goes across his property, and there is no basis for such a thing being built. He noted that he has an agreement with the City that gives the width of that road to be a maximum of 12 feet wide and to be passable only by the City's 4-x-4 fire trucks. He added that there is no capability of having an EVA as described in the Wildland Fire Report. He stated that this is the exact same mistake as the last proposal where this project has to have an EVA but does not have one. He indicated that what should be done is figure out a project that does not require an EVA through Grey Eagle Court because there cannot be one there, figure out what the lot configurations should be, and then use that, rather than go all the way down the process with the expectation that there will be an EVA that cannot legally be put in place.

Russell Schmidt stated that he and his wife have lived in the neighborhood since July of 1998 and are well acquainted with the history of this proposal. He indicated that he has a few things he wanted to flag in a pre-summary fashion, starting with the EVA, which was a real sticking point in the last proposal. He noted that when the EVA was mentioned earlier tonight, it was discussed as if it were part of the previous proposal, something that was okay, and that it was a done deal. He indicated that it was never a done deal, that during the process for the previous proposal, they were never approached and asked if this would be okay.

Mr. Schmidt stated that their house is on a private street and that their lot goes out to the middle of the street. He noted that allowing an EVA with public egress on that street will subject them to unlimited liability in the event that in an emergency case, the road is blocked by a water truck delivering water softener. He indicated that this kind of thing has happened in the past in other neighborhoods with this kind of street, and he finds it very offensive that the planning process and the applicants assume they can just attach to this private street in order to meet the requirements of the Fire Department.

Mr. Schmidt stated that the second thing he wanted to address was the siting of the building pads on lots visible from Grey Eagle Court. He indicated that they have a

one-story house, and their primary view corridor from their house is towards Pleasanton Ridge; the view out the front is of their neighbors, and they do not have a view out over the valley or of Stanley Boulevard and towards Mt. Diablo as everyone else on the street does. He expressed concern about the visibility both during the day and at night when the houses are going to be lit up. He indicated that as part of the workshop process, he would like to see story poles showing the maximum size of a house that can be built on a lot, including a stepped house. He inquired how many steps would be allowed on any given building pad. He noted that a house with two or three steps would effectively look like a 50-foot tall structure, and adding another step or two would make it look really huge.

Mr. Schmidt stated that the third issue is the siting of agricultural buildings on those lots. He indicated that he and his wife own horses, and they understand that people enjoy that kind of thing and want to encourage horse ownership and those kinds of activities. He noted, however, that the proposal does not prohibit somebody from building literally a 40-stall barn of unlimited height that would be facing their house. He indicated that the square footage of these agriculture buildings needs to be clarified. He added that, as a horse owner, he knew that a property owner would not want to site a barn next to his or her house because of the smell and the flies, and, therefore, it would be put some distance away, as far away as possible from the house, which would mean typically pushing it down slopes; so there would be a very large visual impact with a house at the top and a huge barn below.

Mr. Schmidt then inquired what standards the visual simulations would have to meet. He noted that this was an issue in the last proposal, where the visual simulations were viewed through a wide angle lens rather than what the normal human eye can see in order to minimize the apparent visual impact to the houses. He also brought up the elimination of the water pumping station supplying the City water tank above Grey Eagle Court and replacing it with a gravity feed from the Oak Grove property. He inquired if this would reduce the water supply to Grey Eagle for both potable water and for fire and indicated that he would like to see some kind of analysis or discussion on that. He then expressed concern about the noise and dust during grading and construction. Finally, he stated the need for a thorough Supplemental Environmental Impact Report (SEIR).

Mary Roberts stated that about 20 feet of her property abuts the project site. She noted that the staff report states on page 7 that there will be approximately 50 acres around the developable area of each property which will be Rural Density Residential (RDR). She further noted that if the 50 acres outside the 10 building envelopes are designated RDR and are not 25-percent slopes, they could include quite a few more homes down the road. She added that she does not understand where the 86 acres of complete open space is and requested staff to identify where those acres are located.

With respect to Ms. Goldade's request for 1, 250 square feet for second units, Ms. Roberts stated that is the maximum square footage for a second unit in the State of California. She noted that with staff's proposal to limit second units to 20 percent of the primary home's floor area, the 12,500-square-foot homes would be allowed to build a

second unit that would be bigger than a lot of houses in their development. She added that garages and accessory structures outside of the 12,500-square-foot house, including poolhouses should be limited.

Ms. Roberts expressed concern about the trail and appreciated the fact that Oak Grove is proposing a trail from the Berlogar property through to the Foley property. She stated that the 1993 Trail Plan indicates a Class A trail going across the bottom of the point of the Lin property for good reason. She noted that the Foley property is outside the Urban Growth Boundary and that she thinks the only time there can be easements for trails would be when the property is developed; hence, the trail from the Berlogar property would be necessary, which he had to have as an easement when he developed. She further noted that staff will need to look at the 1993 plan for the regional trails and the fact that there is a Class A trail going across the point from that property from east to west.

Ms. Roberts stated that barns in the Vineyard corridor, where there are 20-acre properties, were limited to 400 square feet. She indicated that there should be height limits for these structures. She noted that she has been going to East Dublin recently and has seen some three-story houses that are being built high on the hills and are sticking out.

Finally, Ms. Roberts stated that the EVA is a problem and that she understands Mr. Schmidt's and the Groves' concern. She added that there must be some way that this can be worked out with the Fire Department and the City to indemnify so that the liability is not there. She concluded that she knows that the applicant wants to limit the development to ten units and not just have little pockets; however, there are concerns that more will be added in time, and to think that nothing else will happen ten years down the road is naïve.

Norberto Ruiz stated that he was strongly opposed to having the new proposed development gated. He noted that with proposed lot sizes of 16 acres to 214 acres, it is abundantly clear that this development is oriented toward high-end sales, not for the top one percent of residents, but for the top one percent of the one percent. He added that a gate to this development will further serve to clearly convey the message that the rest of Pleasanton residents are not welcome. He pointed out that the new development will tap into the infrastructure – fire, police, and utility services – that are paid for by all Pleasanton residents, and therefore, the main road, while private, should not be gated and should allow other Pleasanton residents the freedom to walk, bicycle or drive through the neighborhood. He indicated that Pleasanton has already developed enough gated communities, and the established development guidelines express the community's desire to limit further gated developments.

Mr. Ruiz stated that he lives very near the proposed development on a non-gated street where he sometimes sees other Pleasanton residents walking or bicycling the neighborhood. He indicated that this creates a sense of community rather than one of isolation. He added that sales of the lots will not be adversely affected if there are no

gates and noted that with the very large lot sites being proposed, the new home builders will be able to put a gate on their property if they so desire. He pointed out that a gate to the entrance of this development will only serve to alienate current Pleasanton residents and further divide the community.

With respect to the protection of the ridgelines, Mr. Ruiz stated that as someone born in Pleasanton in the 1950's, he has seen much of the natural beauty of the region destroyed by development. He indicated that he hopes every step possible is taken to reduce the visual blight that will be created by massive homes on the beautiful hillsides in the southeast corner of town. He noted that the beauty that once was Pleasanton is dying a death of a thousand cuts, and he asked the Commission not to approve homes that destroy the ridgelines, which should be protected for future generations.

Kay Ayala stated that she went down to the Planning Division earlier today to pick up a copy of the Hillside Protection Ordinance and the Grading Ordinance that were required by Measure QQ, and she was told that there was none. She referred to Section 2-B of Exhibit E, the full text of Measure QQ, and read: "The General Plan has a policy that Pleasanton residents will participate in land use planning and decision-making, and in recognition of such collaborative and public process, an ordinance/design guidelines should be developed to (a) Identify specific ridges based on engineering considerations ... in the Southeast Hills, in particular, and other relevant data where development should not occur. (b) Such ordinance/design guidelines must be drafted as expeditiously as possible and by no later than the end of November 2009." She noted that this is now 2012, and the City does not have a Hillside Protection Ordinance or a Grading Ordinance. She added that this was where the problem was with Lund Ranch II and now here: the City is not abiding by what the voters asked the City to do.

Ms. Ayala stated that she and Ms. Becky Dennis had said: "Open space advocates and community leaders ask the City Council to place Measure QQ on the ballot. We want a hillside preservation measure that protects Pleasanton's opportunity to receive hundreds of acres of open space, land dedication and maintenance endowments for future parks and trails worth more than \$15 million. Please vote yes on QQ." She named some who endorsed the Measure: Mayor Hosterman, Vice Mayor Jerry Thorne, Councilmember Cheryl Cook-Kallio, former BART Director Erlene deMarcus who works for Mr. Tong, Planning Commissioner Kathy Narum, Planning Commissioner Arne Olson, and Planning Commissioner Jennifer Pearce.

Ms. Ayala stated that this is the problem with these developments that are coming forward and puts staff in a particularly bad position. She requested the Commission to ask staff that a Hillside Protection Ordinance and a Grading Ordinance be the first order of business, and when these projects come through, the Commission and staff would have something to go with. She reminded the Commission that the voters voted for Measures PP and QQ, and they were both incorporated into the General Plan so to make the Commission's job a lot easier.

Ms. Ayala stated that story poles are a must, as was seen with a Downtown plan lately. She added that with this plan and the proposed heights, it has been the same road designation three times in a row now. She cited that the definition of insanity is doing the same thing over and over and expecting different results. She indicated that this is a mile-long road on the top of our ridges.

Ms. Ayala stated that two or three months ago, the members of the Referendum Committee were requested by Mr. Marty Inderbitzen to meet with him. She noted that they actually had a nice meeting, starting off with a request to please drop the lawsuits; the community would work a lot better with the Commission if the lawsuits are not hanging over their heads, but he said they would not do that; however, Mr. Inderbitzen agreed to meet with them and visit the project site to see the siting of these houses. She noted that Karla Brown was there, and at that time, she was also the President of the Kottinger Homeowners Association. She added that Mr. Inderbitzen had set up a meeting with the Homeowners Association, and three or four weeks past that, he canceled the meeting and said they were not going to the site and that there would be no more meetings. She pointed out that the developer, with all that community involvement the last time, is not taking the neighborhoods first; he has had no communication with Grey Eagle or Vintage Hills II residents. Ms. Ayala requested the Commission to consider putting the ordinances in place.

Ms. Goldade stated that visual simulations will be done as part of the Supplemental Environmental Impact Report (EIR) process to address the visual concern. She indicated that she thinks this analysis should be done to see what really transpires with the heights before the Commission or the public makes a decision on the building height. She added that a lot of the home sites have been designed to limit the view impacts, lowering them off the ridges, down with the trees. She stated that in the case of Lot 10, there is a berm being developed or proposed to help shield that home site from views. She then noted that the project is exempt from Measure PP because the proposal is for ten homes, without any plans to come back with any more down the road, and that the project is consistent with Measure QQ.

Commissioner O'Connor stated that the question was if the applicant would be willing at some appropriate stage to install story poles for a 12,500-square-foot house to prove to people that there is going to be a limit to the visual impacts of these homes.

Ms. Goldade replied that she was not sure if she can say that herself.

Commissioner O'Connor noted that he does not have a problem if the applicant wants to confer with the owner of the property first.

Ms. Goldade indicated that there would be a greater value with the photo simulations that will be done because the story poles are so thin, and people would be viewing them from great distances. She added that she also thinks that a lot of the homes are conceptually designed and that she was not sure if people will be happy with the story poles at this point.

O'Connor recalled the issues that arose with the last couple of hillside developments where they had visual simulations and people questioning camera angles and size of the lens, etc.

Ms. Goldade replied that was correct.

Commissioner O'Connor continued that he was not sure people are going to trust the story poles.

James Tong, Charter Properties, stated that the proposal is basically a ten custom-lot subdivision; no houses are being proposed at all at this point, and there will be numerous changes to go through the site design review process, such as whether the houses are one or two stories and whether there are visual impacts. He indicated that the project went through this process numerous times when they received approval for a 51-lot subdivision a few years back and which was then referended. He noted that at this point in time, it is too early to talk about the housing, its design details, colors, and so forth. He indicated that the plan is basically to try to remain as flexible as possible with respect to the siting of the houses. He added that the general public will have the chance to critique the design of the houses when that time comes, which will probably be years down the line.

Mr. Tong stated that this project has been going on for about 20 years and that he is really stunned that this project has changed from 85 houses and a golf course to 51 houses, and now down to ten houses. He noted that they have spent five years working with the neighborhood and cannot understand how the same questions have remained.

Ms. Goldade stated that because many of the home sites are proposed on graded sites, it would not be realistic to put story poles where the preferred home sites are. She added that they can certainly consider that.

Commissioner Olson asked the applicants when they would anticipate selling the lots, assuming the project is approved, and whether they really think people will buy the lots if they have no idea what they can build there.

Ms. Goldade replied that she is not sure of the timeline and that it would depend on the economics. She noted that there will certainly be some developer improvements that need to be done, such as infrastructure, streets, and so forth.

Commissioner Olson stated that the point he is trying to make is that it seems to him that buyers would want to know what kind of structure they can build on the lots before they buy them, and that is why this process is so important.

Ms. Goldade agreed. She added that part of the zoning and design guidelines for the project will set the parameters of the building height, square footage, and the actual design of the home, and the buyers can work within those parameters.

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

Commissioner Pearce asked Ms. Seto if she can talk for a moment about the legal ramifications of having an EVA on a private street, just for the purposes of this hearing and the Minutes. She noted that the Planning Commission has talked about the EVA in the past.

Larissa Seto stated that there has been a lot of discussion for this project regarding what rights the City has within Grey Eagle Court based on various documents and part of the tract map when it was originally recorded. She explained that part of the language in the CC&R's includes right of entry, and language in the Tract Map talks about easements granted to the public and to the City for access and various issues like that. She indicated that she thinks this remains an open question that needs to be discussed. She noted that she knows that the property owners are concerned with an easement surcharge, but there is also language in various documents that have been recorded and disclosed to the various property owners regarding how the City has effectively an unlimited right of entry into that area. She further noted that whether the City's right-of-entry also includes when emergency services personnel direct other people to go in that area remains an issue to be discussed. She indicated that the City has heard the concerns expressed by property owners about issues regarding potential liability, and there are several options that the City is considering and analyzing to address that.

Commissioner O'Connor inquired if this EVA issue was properly vetted at the time the City approved the plan to build 51 homes on the site or if there is still discussion at this time with respect to whether or not the City has that right to go through there.

Ms. Seto replied that the City feels there is the right, but it is always open to hear what other people have to say and new or additional information they want to present in their own analyses. She noted that, as she mentioned earlier, there are also several legal documents in terms of the original Tract Maps that did grant rights to the City for EVA easements at different heights and points of entry, and these documents bind all the property owners of the subdivision.

Commission Olson stated that he is really troubled by the situation raised by Ms. Ayala regarding the provisions of Measure QQ. He noted that it appears to him that the homework has not been done and it is several years late. He inquired where the City is with respect to the Ordinances and how the City can we go forward with this project or any other project up in that area without this work being done.



Mr. Dolan replied that it is a legitimate question but that it is not listed as one of the items on the City Council's current priorities or work plan. He noted that the Ordinances have not been done and that he believes that this would affect a limited number of parcels; however, this is something that needs to be discussed, whether it is done at the same time the projects are processed or whether the comments given would just be evaluated. He added that these are things that need to be discussed with the City Manager.

Commissioner O'Connor inquired if there is any possibility of modifying the Council's priority list to include this issue, given that three current Councilmembers, one of whom is the Mayor, have signed onto Measure QQ back when it was on the ballot. He noted that this would be not only for these ten units but for other properties in the area, such as the Greenbriar proposal for 50 units which has already come before the Commission as a Work Session.

Chair Pentin inquired if the Commission can proceed with giving direction to applicants before the Ordinances are done.

Ms. Seto replied that if, in the process of reviewing these projects, the Commission makes findings that projects are consistent with the General Plan, as Measure QQ and Measure PP are in the General Plan, then it can proceed, notwithstanding when the Council decides to move forward with other legislative matters. She clarified that after the vote in 2008 on Measure PP and Measure QQ, the Council did have a meeting where it effectively considered how it reconciled those two policies and decisions in terms of policy having moved forward with both of those. She noted that at the time, the Council did not decide to prioritize development of any ordinance or ordinances as discussed in Measure QQ, feeling that many of those kinds of issues were already addressed in Measure PP, which had also been adopted then.

Mr. Dolan stated that he recognizes that the Commission needs a better answer but that staff is not going to be able to provide the Commission with one tonight.

Commissioner O'Connor stated that this touches on Discussion Question No. 1, but if the Commission is not going to have those ordinances in place, and it is going to try and draft some sort of development plan within the General Plan, which certainly has language regarding preserving hillsides, he would have to be very conservative in what he would be looking for to make sure that the intent of the General Plan is met. He noted that part of his concern is that the road is in the same place, tearing up the top of a ridgeline where cars will be seen from throughout the City, and there are at least five out of the ten home sites whose building pads are right on the roadway, which means that they are at the top of the ridge. He indicated that he did not think that meets the intent of the General Plan to preserve hillsides, especially in the Southeast Hills. He added that he does not think it conforms to Measure QQ, and even though it is exempt from Measure PP, it does not mean that the General Plan should not be followed; hence, he has issues regarding the site layout and the location of structures.

Commissioner Narum inquired if, before discussing that issue, the Commission could get a response on the question on page 7 of the staff report raised by Ms. Roberts regarding whether designating the 50 acres to RDR would later allow somebody to come in and build.

Mr. Otto replied that the idea for 50 acres is based on the RDR density of one unit per five acres, thus equating it to ten units. He explained that the General Plan designation for when the prior project was approved was Low Density Residential (LDR), which is two units or less per acre and would allow somewhere close to 200 units. He clarified that the limit of the project was 51 units, and there actually is a note in the General Plan legend that states that the maximum number of units for Oak Grove is 51. He noted that staff's intent was to just delete that with this current General Plan Amendment; however, if the Commission feels more comfortable with an actual text that allows a maximum of ten units for Oak Grove, that could also be done.

Ms. Seto stated that Measure PP did have language that a legal lot of record, as of the date referenced in the Measure, can be subdivided only to a maximum of ten lots; therefore, there could be no serial subdivision if it comes up with ten lots now. She explained that no one can come back ten years later and say that he/she has a 250 plus-acre lot and would now like to have ten more lots. She added that this cannot be circumvented because this was what was adopted by the voters in the General Plan, absent that being repealed.

Commissioner Narum inquired if there could be some kind of deed restriction on that as there would be a different Commissioners ten years down the road.

Ms. Seto replied that a disclosure could be included, although she did not think it was necessary because it will remain ten lots.

Chair Pentin requested confirmation that it could not be brought back as long as Measure PP is in effect.

Ms. Seto replied that is correct. She explained that Measure PP specifically says that if it is a project of ten or less units, it is not subject to the regulations with regard to the grading and hillsides, as referenced in the earlier part of the text of that Measure; therefore, the language about the ten units and the subdivision limits are in place throughout.

Chair Pentin inquired if there are limits on agricultural building sizes in Pleasanton and if 400 square feet is the standard.

Mr. Otto replied that he does not recall the exact limit in the Vineyard Avenue Corridor Specific Plan and that there usually is nothing specific about agricultural structures. He noted that in straight-zoned districts, there are floor area ratios (FAR) which include all enclosed structures, including agricultural accessory structures. He clarified that the applicant is requesting to not count agriculture accessory structures against the FAR for

this project, and if the Commission or the Council so desired, that could be approved because this is a PUD, and as such, it can have different standards.

Commissioner Narum stated that she recalls in the Yee property, which is in the western hills, the Commission allowed agricultural buildings. She indicated that it would seem like that would be a good kind of benchmark because it is up in the hills and very visible. She added that she remembers the Commission struggling a bit with that and to allow them outside the building envelope on some of the bigger lots.

Commissioner O'Connor noted that the Commission would have some examples between that development and the Vineyard Avenue corridor. He added, however, that there would definitely have to be limits, given the size of these lots, because, otherwise, the property owners could just go out there and start building an unlimited number of structures, and it would end up with something unacceptable.

Commissioner Pearce indicated that she did not want to populate these hills with structures.

Mr. Dolan stated that it would be hard for him to imagine a scenario where, by the time this is done, there would not be some limitation. He indicated that he also believes that it would vary by lots as they are dramatically different in size and topography. He added that there are portions of some of these larger sites that will not be seen by anybody, and he believes that it would be necessary to drill down to that level of detail to figure out what the appropriate limitations might be.

Commissioner Pearce asked Mr. Dolan when he proposed to do that.

Mr. Dolan replied that it would be in advance of writing a recommendation, assuming that they get to that point. He added that it could be done sooner rather than later.

Commissioner Narum inquired what the setback for agricultural structures would be on the lots that border existing houses, like those on the Grey Eagle subdivision and Kottinger Ranch.

Mr. Otto replied that the current guidelines do not have a setback unless it is for housing and animals, which would be 100 feet from another house or 50 feet from the property line.

The Commission then proceeded to the Discussion Questions listed in Exhibit B.

***1. Site Layout and Location of Structures – Does the Commission have any issues with the general development pattern or location of the structures?***

Commissioner O'Connor indicated that he already answered that question.

Commissioner Narum stated that she had a comment on Commissioner O'Connor's concern about some of the houses along the road on top of the hill. She noted that while his comment was valid, she thinks that after grading is done, those houses would actually be a little bit lower and a bit off the road, so it would not be a road with houses right on it.

Commissioner O'Connor stated that he was looking at the map, and some of the building envelopes come up and actually abut the road, so there is the possibility that a homeowner could request coming right up to the road, which would put the house at the peak because the road follows the peak. He indicated that he did not like the road there either and noted that he did not think the two larger lots would be an issue because the driveway goes down the topography; however, for the 20- or 30-acre property, he did not see any reason for having the building envelopes sitting right on top of the ridgeline.

Commissioner Narum stated that the topography on Lot 3 is a very steep hill falling off to the right where the building envelope is, which limits the location of the building envelope on the lot.

Commissioner O'Connor stated that he did not want to have to draw the development plan for the applicant. He noted, however, that there were 51 homes there at one time, 15 or 20 of which were pretty prominent on top of the ridge; but there were another 30 homes or more that were not. He indicated that with 500 acres up there, the developers should be able to find a place to put a home that is not sitting on a prominent ridgeline.

Commissioner Pearce stated that in some instances, that might result in restructuring the lots.

Commissioner O'Connor added that probably the road might also have to be restructured.

Commissioner Olson indicated that he was concerned about the process here. He stated that to some extent, he thinks the cart is before the horse, and if the idea is to sell these lots to people who think they can further develop them, in other words, there is no interest in agriculture at all, then there needs to be disclosures indicating that is not a possibility.

Chair Pentin stated that with respect to the location of the current pads in view of the previous proposal and the topography, it seems that the developer is making attempts not to get up on the ridges. He noted that it appears like the proposed plan follows the same route as the previous layout, and, therefore, he is not sure what the visibility is on the current plan versus which ones were visible and were not visible on the previous plan. He stated that from what he is seeing of the topography, it appears that the hills around these houses are the lower parts of the topography. He added that he is not familiar with the road in the sense of it running right along the top of that ridge, and he would like staff to address Commissioner O'Connor's statement that the houses on that

road would be visible throughout Pleasanton. He indicated that answers regarding this matter would tell him more about the site layout and the location of those structures. He added that he is not sure there is another place on this property where a road could be put through.

Chair Pentin continued that he is not sure that any proposal here could be different as far as a road is concerned, and if that is the case, where to place the pads that are so radically different than the original 81 homes or the second proposal of 51 homes without digging up some ridges.

Commissioner Narum agreed, and without cutting down trees.

Commissioner Pearce agreed. She noted that part of the balance she sometimes has trouble finding is preservation of the views versus preservation of the actual hills. She explained that where the building envelopes are located preserves more trees and more wildlife with less grading and is less environmentally sensitive. She indicated that while she does not want to have significant view impacts, the hills themselves and the things going on in the hills are very important to her. She stated that she does not know what the alternatives are, and she does not want to just say that the pads need to be relocated because putting them somewhere else could damage the hills much more significantly.

Commissioner Narum added that it could also result in 50 trees being removed.

Chair Pentin stated that he can honestly say that with more information as to whether the pads can be lowered or pushed back by some trees where the visibility is not as bad, he can see where adjustments of individual pads can occur in the general areas where they are already located. He added, however, that in looking at where the previous development with 51 homes and the 10 being proposed now, he just does not see where the road can be changed or the pads lowered only to meet the visibility issue. He noted that when he sees this proposal and the proposal to remove basically four trees for grading, he sees good things if this is going to go forward.

Commissioner O'Connor noted that the proposal for removal of trees is on the road and not on the building pad. He added that the impact on the trees will not be known until the building pads are set.

Chair Pentin indicated that he understands that.

Commissioner Pearce added that the homes would come back to the Commission individually.

Mr. Dolan added that there are only ten sites, and the best way to figure out whether or not the site is going to be visible is to go to the site. He noted that when a person is standing on the home site looking out, the person can see what will be visible from off-site. He indicated that staff can work something out with the applicant to get the

Commissioners on the ten home sites. He noted that this is how staff plans on making its recommendations on each of the houses. He added that the Commission will have the benefit of the visual analysis which will be helpful.

With respect to the idea of installing story poles, Mr. Dolan stated that he understands the issue of trust, but he also thinks that the applicant makes a good point that the distances from where one would be looking at these things are just going to be invisible. He indicated that this is something they need to think about and figure out a way to best demonstrate it.

Commissioner O'Connor stated that the story poles on Neal Street opened it up a little bit by putting up the orange mesh.

Mr. Dolan stated that it would still be a long way from most of the viewpoints.

Chair Pentin stated that he honestly feels that the time for a story pole is when a house is proposed for a pad so one can see what the size of the structure is going to be. He added that he is not sure that guessing what will be put on a particular pad and expecting that to be an answer will work.

Commissioner O'Connor stated that he is more concerned about where the building site itself will be. He indicated that if there is no story pole to indicate that it is a wrong site, and the building pad is left where it is, then it would be too late for the person who bought the property because the buyer would have to work within the building pad that the person bought. He stated that out of these homes along the top, there are a few lots that are on the east/west side that do not look onto the Grey Eagle side. He added that dropping off the hill, even if the home has to be stepped along the hillside without additional grading, it will not make the home that visible if it is below the blue sky; but once the blue sky is broken, it can be seen for a long way.

Commissioner Pearce inquired how story poles can be installed without doing grading, how significant holes for the story poles can be done up there without grading.

Commissioner Olson stated that he thinks Commissioner Pentin is correct that one needs to know where the pad is going to be and what is proposed.

Commissioner Narum stated that the flip side of that is if this is approved with certain height criteria and someone puts up story poles; and then the Commission does not like it, but it is within the guidelines, then there could be a problem about what to do.

Commissioner Pearce stated that even if a maximum height is established, there would obviously be discretion within each application as it comes through the Design Review process. She noted that a maximum height is not a mandate, and the Commission can always exercise that kind of discretion based on issues such as visibility.

Chair Pentin stated that if someone brought him the approved plan and then said that a house on Lot 5 is going to be this look and this size, but that same house is going to be over on Lot 10, he might have a completely different view of that in terms of approving the design review for that house. He stated that he thinks that this is within the purview of the Planning Commission at whatever point, but he cannot go any further on this from the information he has.

Commissioner Narum stated that she thinks what is more important here is to get the height measurement done right and have some restrictions of single-story homes on some of the lots.

Discussion Questions No. 2 and No. 3 were considered together.

**2. *House Size and Calculations – Is the Commission satisfied with the proposed size limitation and calculation?***

**3. *House Height – Is the Commission satisfied with the proposed height measurement?***

Chair Pentin stated that these two questions can be considered together because one is causing grief with the other. He indicated that a request to have the house stepped and then measuring the height from the bases of each stepped section brings up the question brought up by one of the speakers about how many steps will be allowed. He noted that if there were five steps, none of which exceeds 30 feet, it could really be a 60-foot tall step. He inquired how that would be controlled and if language could be added to not permit that.

Mr. Otto replied that there currently is no language talking about the number of steps but that could be added as a requirement.

Chair Pentin stated that he believes measuring the height from the level of each step is problematic because it could end up being a 60-foot tall house.

Commissioners Narum and Olson agreed

Commissioner Pearce stated that she did not think the visual impact of a home like that would be acceptable, even though it might technically be 30 feet tall.

Chair Pentin stated that there could be a variance if the house is facing a bunch of trees or a box canyon and literally cannot be seen, then the number of steps probably would not be significant, especially since there is no neighbor who could see how far the house steps down, as opposed to a stepped house on Lot 10.

Commissioner Olson agreed.

Commissioner Narum stated that if Chair Pentin is basically saying that the height be measured the same way as that for the previous proposal for 51 homes, then she would be in favor of that.

Chair Pentin said yes.

Commissioner O'Connor stated that if there is some type of guideline and given what they have to work with, he would rather be more conservative and not have anything more than three levels. He noted that with a maximum to the number of step levels and with a guideline on how it would be measured from where to where, an extra level would probably add another 10 to 15 feet, and the third story is never going to look taller than 45 feet. He added that it does not mean that all who ask for the maximum will get the maximum, especially if the house has other impacts.

Commissioner Olson stated that he thinks it is also a function of where the view of that house is coming from. With respect to house size, he recalled that this Commission looked at a home that was about 14,000 square feet over in the Vineyard Avenue corridor neighborhood. He noted that this Commission has had a habit of saddling those very large homes with very high LEED point requirements. He added that he has been of that view and would certainly take the view here that if these homes are going to be this size, they are going to have to be very efficient.

Commissioner Narum stated that she is not comfortable about not including part of the garage beyond about 800 square feet in the 12,500-square-foot total. She noted that there should be some understanding of what the agricultural buildings are going to be, with some parameters on height and size. She added that there should be a consideration about setbacks on the lots up against existing houses and that second units should be limited to the State's 1,200-square-foot maximum.

Commissioner Pearce stated that she appreciated the applicant's proposal to limit second units to 1,200 square feet instead of the 20 percent maximum and believed that was more reasonable. She noted that she was not sure about what to do with this, and when she first contemplated the issue of second units and allowing additional square footage for it, she really contemplated an attached second unit, which in essence results in a bigger house. She proposed accepting the applicant's proposal of a 1,200-square-foot second unit but have it be limited as a detached second unit.

Commissioner Narum inquired if a second unit can be required to be detached.

Commissioner Pearce said yes, unless an attached second unit is allowed above and beyond the 12,500-square-foot maximum to the main house.

Mr. Dolan stated that it can be controlled once it is above the exempted square footage, but he was not sure that can be dictated if it is below the maximum limit. He indicated that staff would look into that matter.



Commissioner O'Connor stated that a maximum size on the primary home of 12,500 square feet with an 800-square-foot exemption would be a 13,300-square-foot structure.

Mr. Otto clarified that the square footage of the second unit does not need to be exempted; it can be included as part of the 12,500-square-foot limit.

Commissioner Pearce stated that she is not interested in having unlimited accessory structures in terms of size and height. She noted that she is concerned about view impacts and does not need an 80-foot tall silo going in.

Commissioner O'Connor stated that guidelines should be set regarding the maximum square footage for accessory structures, similar to that of a home and a garage.

Commissioner Pearce stated that she supported the concept in the staff report that limited accessory structures to the building envelopes on Sites 3 to 10.

Commissioner Narum indicated that she is in support of that as well.

Commissioner Narum requested clarification on whether the Commission had agreed that the 1,200-square-foot second unit counted towards the 12,500-square-foot maximum for the primary house.

Chair Pentin replied that staff would look into that and come back to the Commission with their findings.

Commissioner Pearce noted that this would be for attached second units and not for detached units.

Mr. Dolan indicated that if the Commission wanted the 1,200-square-foot second unit to be counted towards the 12,500-square-foot maximum for the primary house, the Commission could just lower the maximum on the rest of the house.

Commissioner O'Connor stated that the limit could still be 12,500 square feet, including the 1,200-square-foot second unit, regardless of whether it is attached or detached.

Commissioner Narum stated that she would like to do that. She noted that when an 800-square-foot garage is added, there could be view impacts. She indicated that she is not as concerned about lots and that she thinks it would be fine for Lots 1 and 2 as they have more room, but not for the others.

Chair Pentin noted that the staff report says that the Commission may wish to discuss whether to follow the Municipal Code parameters for attached and detached second unit sizes, that second units would be limited to 20 percent of the floor area of the primary homes, but there is no distinction between the size of an attached or detached second unit. He further noted that there is also a distinction between an attached a detached

unit, with the detached unit not to exceed 1,200 square feet, as opposed to 20 percent of the main house.

Commissioner O'Connor stated that three of the Commissioners want to limit the size to 12,500 square feet, including the second unit whether attached or detached.

Commissioner Pearce stated that she did not care how it is done for a detached second unit but that if it is an attached second unit, it would be taken away from the 12,500-square-foot maximum.

Chair Pentin stated that it is part of the house. He added that he was in favor of detached units not to exceed 1,200 square feet.

Commissioner Pearce agreed and added that she is not in favor of the 20 percent.

Commissioner Olson agreed.

Commissioner O'Connor stated that it would be cleaner if it is left as a maximum buildable of 12,500 square feet, whether the second unit is detached or not, and if the property owner chooses to move 1,200 square feet out into the yard, that 1,200 square feet will be deducted from the 12,500-square-foot total.

Mr. Otto stated that the Code has a limit of 30 percent on attached second units; the intent is a second unit and not a duet, so it would not be a 50/50. He added that there is intentionally a limit of 30 percent so it would still be ancillary to the primary dwelling.

Chair Pentin stated that the staff report says second units would be limited to 20 percent of the primary home's floor area, but there is no distinction between the size of an attached or detached second unit. He added that he does not really care about an attached second unit that is part of the 12,500-square-foot total, but the detached unit cannot be bigger than 1,200 square feet.

Commissioner O'Connor indicated that it still should not be a duplex.

Chair Pentin stated that this is the reason it cannot go above 30 percent.

#### ***4. Gated Development – Could the Commission accept a gate at the project entrance?***

Commissioner Olson stated that he feels very strongly that there needs to be a gate at the end of Hearst Drive, and a gate could be designed that would provide vehicle through access only with an entry key but can be accessed around it on foot or with a bicycle. He noted that without a gate there would be asking for trouble up this road with cars and teenagers. He stated that it would be interesting to know how the Police Department would view that. He added that there is an access road up the way probably to get down to Lots 1 and 2, and no gate would be needed there if there is one

at the end of Hearst Drive. He indicated that he certainly would also be in favor of these individual property owners having gates on the entries to their properties.

Commissioner Narum agreed.

Chair Pentin stated that he agrees completely. He noted that at the Golden Eagle subdivision, anyone who wants to drive a car into the subdivision would have to go to the gate and have a pass; but there is a pathway that goes right in that one can walk or run or ride a bike through, and that seems to work fine

Commissioner O'Connor stated that one can talk to the guard and drive a car right through to go to the staging area and up to Ridge Park.

Commissioner O'Connor stated that he is not generally in favor of gating off communities, but this is ten units and it is an exceptional area, so he really does not have a problem with gating it.

Commissioner Pearce stated that she agreed and that it reminds her of the Lester property. She noted that she is not generally in favor of gates and that the General Plan discourages them, but the Commission made an exception with the Lester property because of safety concerns.

Commissioner Narum stated that she agreed with that.

**5. *Emergency Vehicle Access – Does the Commission wish to provide any comments regarding the EVA at this time?***

Commissioner Pearce stated that she has some concerns about the legal ramifications of the EVA. She noted that the staff report indicates this is a really preliminary discussion of the EVA and that the Fire Department is still evaluating this. She indicated that there obviously needs to be an EVA and questioned if a private street is the correct location for an EVA and with these measurements.

Mr. Dolan stated that there has been on-going dialogue, particularly about the physical requirements, and the Fire Department has shown some flexibility with what it originally demanded to be satisfied with a physical layout similar to what was approved before. He noted that two issues remain once that is resolved, and he felt those two issues could also be resolved: First, does the City have the right to do it? He indicated that the City concluded the last time that it did have the right. He noted that he is not sure the City has been shown anything that leads it to believe that it will come to a different conclusion unless there would be something that changed the City's position. He added that if there is something the City needs to consider, it will. And second, the issue of liability or indemnification. He indicated that this is something where there has been some movement. He stated that if the Commission's conclusion is that an EVA is necessary, there is not much more to offer; the City needs to work through those other issues and bring back more definitive information on all of them down the road.

In response to Mr. Dolan's question regarding whether an EVA is needed, Commissioner Pearce indicated that the Fire Department is recommending an EVA.

Chair Pentin agreed, noting that the staff report states that the City's Fire Department has indicated an EVA is still recommended for the project in the northern EVA route and that Grey Eagle Court is the preferred route.

Commissioner O'Connor inquired if it is just the Fire Department who makes the recommendation and how it goes about its process to do that. He indicated that he lives in a neighborhood where there are EVAs, and they have fewer homes and are not as high up as Kottinger Ranch. He noted that the only way out for the proposed development is at the top where Kottinger Ranch currently dead-ends, and this is up in the hills where there is a much bigger fire hazard. He further inquired who determines how many EVAs are needed.

Mr. Dolan replied that this is the Fire Department's profession. He indicated that Fire Department staff went up on the hill, looked around at the terrain, and determined what they thought the fire pattern would be. He noted that this was like a no-brainer to them. He added that the Fire Chief took it even further and conferred with someone who models fire pattern, and that person concurred with the conclusion. He stated that it is the Fire Department's professional judgment that one is necessary.

Commissioner O'Connor inquired if there is any possibility that the Fire Department will change its determination with only ten units, down from the previous 51 units.

Mr. Dolan replied that staff had suggested this would be a lot easier if an EVA was not needed, and the Fire Department believes that it is necessary.

Commissioner O'Connor stated that if this is a little bit different from most other EVAs in the City as this is a private street, and he thinks the liability has to be removed somehow. He recalled that he believed there was an agreement before on an alternate, narrower route that goes around the owner's property.

Mr. Dolan said yes.

Commissioner O'Connor suggested that these things be worked out far enough in advance so it does not become an issue at the very tail end of the development process.

Mr. Dolan stated that staff will make every effort to do that. He added that staff will certainly not propose an EVA anywhere where the City feels like it does not have the right to access.

**6. Public Trails – Does the Commission wish to provide any comments on the trail proposal?**

Chair Pentin stated that, of course, he would love to see that open space dedication be provided. He noted that it was a wonderful piece of property, and having lost the open space dedication is disappointing for a trails person like himself. He added that retaining the Class C trail along the side, the north/south route, is wonderful, but he would like to find a way to eventually bring back the Class A trail planned east/west through the property sometime in the future, maybe in the next ten years, when regional trails really do connect. He noted that it would be really disappointing if this huge piece of land is locked off, especially with the possibility of development from the other properties coming forward with Lund Ranch and Foley. He stated that he does not know if the staging areas will ever be brought back, but he would just love to see the project come back with some recognition and possibility of the trails being increased, of having an easement for the trail if and when that time comes.

Commissioners Pearce and Olson agreed. Commissioner Pearce noted that was well said, and she cannot add to that.

Commissioner O'Connor likewise agreed. He indicated that he is not as disappointed with not having all this public open space, but admitted he could be very wrong. He stated that he went up there once and thought the terrain was so steep, he could not imagine that people were going to run too far off the trail. He noted that there were certainly areas where it opened up a bit, but most of that 500 acres was steep enough that he is not sure he would want to have people running all over the 500 acres.

Chair Pentin stated that up on Pleasanton Ridge Regional Park where the City shares the space with the East Bay Regional Park District area, there are trails, such as the Sinbad Trail, where one can go a couple of minutes on the tiered downhill and then just keep going up all the time. He added that it is a wonderful exercise and there are lots of beautiful things to see. He noted that he does not think that who use trails are really concerned with how steep they are; it is having the ability to get out on them, both on and off the trail.

Commissioner Narum stated that she thinks it was more like having the open space.

Chair Pentin agreed that it is more the open space issue. He stated that there will not be 30 trails in there as it was never designed or planned that way, but it would be wonderful to have that access, especially the access connecting to other trails.

Commissioner O'Connor stated that with the proposed building envelopes, the open space feel can be preserved, but if the City can get an easement for this Class A trail, it would be worth looking at.

**7. Potential Impacts to Biological Resources (plants, amphibians, insects, birds, etc.) – Does the Commission wish to provide any comments at this time?**

Commissioner Narum stated that as discussed earlier, this is a tradeoff between view versus the biological resources and finding the balance there. She indicated that this is a difficult thing to do, and the Commission needs to be conservative on the house height and the size so houses can be built in places that are going to be less harmful or have less of an impact on the biological resources, while at the same time trying to minimize the view impacts from below.

Commissioner Pearce noted that is a good point. She added that she would like to mitigate any impact like that.

Chair Pentin stated that this plan versus the previous plans is getting to a point of less and less impact, which is a good thing. He indicated that he is not an engineer but that it appears to him like the pad placements do minimize those impacts. He once again noted the lack of open space but added that there technically is a lot of open space that gets preserved regardless of whether or not it is open to the public.

Commissioner Olson indicated that it was his understanding that the SEIR has been initiated and noted that it would be very instructive on this topic as well.

No action was taken.

Questions Regarding Recused Commissioners

In connection with Commission members recusing themselves due to a conflict of interest, Chair Pentin inquired if a Commissioner can return to the meeting as a citizen after leaving the dais.

Ms. Seto replied that she would be happy to clarify the recusal requirement, whether the Commissioner needs to be in the other room or can be in the audience, or how the Commissioner can address the Commission when it involves his/her residence.

Commissioner O'Connor inquired if a Commissioner can come back and actually address the Commission once he/she is recused.

Ms. Seto said yes, but only with regard to his/her residence and not to a business property that he/she owns.

Chair Pentin stated for clarification purposes that he recused himself whenever a Valley Business Park item comes up but that he has been told by Assistant City Attorney Julie Harryman that he can leave the room and come back as a private citizen and speak in front of this Commission as long as he recuses himself first. He noted that this entails a business item.

Ms. Seto stated that she will get some clarification for all of those issues.

**7. MATTERS INITIATED BY COMMISSION MEMBERS**

East Pleasanton Specific Plan

Commissioner Olson inquired what the status of the East Pleasanton Specific Plan is.

Mr. Dolan replied that staff was ready to go to the City Council with a recommendation but there was some concern raised about the composition of the Task Force. He noted that there will be further discussion but will be back shortly.

WalMart Neighborhood Market

Commissioner Olson also inquired if any Councilmember has appealed the Planning Commission's decision regarding the WalMart Neighborhood Market and how much time is left for filing an appeal.

Mr. Dolan replied that no appeal has been filed yet and that April 3, 2012 is the deadline of the appeal period.

Commissioner O'Connor inquired if only a Council person can appeal.

Ms. Seto replied that WalMart can also appeal it. She explained that the provision for appealing an administrative decision is very limited and is different from the process for a regular appeal.

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

No discussion was held or action taken.

**a. Future Planning Calendar**

No discussion was held or action taken.

**b. Actions of the City Council**

No discussion was held or action taken.

**c. Actions of the Zoning Administrator**

No discussion was held or action taken.

**9. COMMUNICATIONS**

No discussion was held or action taken.

## **10. REFERRALS**

No discussion was held or action taken.

## **11. MATTERS FOR COMMISSION'S INFORMATION**

### Historic Preservation Task Force

Commissioner Pearce stated that the Historic Preservation Task Force had a great meeting with all the members present and a lot of participation. She indicated that discussion included whether or not the 50-year rule was appropriate determining what is historic, the definition of "demolition" and whether or not it should be more specific or more general; creating categories of homes and within those categories, and making determinations on what is appropriate to do to those homes. She added that Mr. Dolan did a great job.

Commissioner O'Connor inquired if the Task Force discussed commercial structures, including those in the Downtown.

Commissioner Pearce replied that the Task Force talked a bit about commercial structures.

Chair Pentin inquired if the Task Force discussed the creation of a new historic district.

Commissioner Pearce replied that the discussion included whether to create a historic district or a conservation district. She noted that there were four meetings left and she was not sure there was enough time to do that, or whether they would make a recommendation to the City Council and propose that they get more time or just simply take more time.

Ms. Seto stated that the Task Force can always take more time.

Mr. Dolan stated that whether the Task Force can take more time depends on where it is when it gets to the end, and how much more time it wants to take. He noted that a lot of time could be wasted if the Task Force was almost at the end but decided it had to report back, and then reconvened after two months.

### Downtown Hospitality Guidelines Task Force

Commissioner Narum stated that the Downtown Hospitality Guidelines Task Force is getting down to the end, with discussion including determining whether or not to change the Noise Ordinance, establishing a transitional area with extended hours of operation where they can serve alcohol as a permitted use, and changing the definition of a bar.



Chair Pentin stated that there are a few things on the table and that the Task Force has made some progress at the last two meetings. He indicated that he thinks the members really want to start moving it, and consequently has extended the time frame as it has reached the end of the prescribed time.

**12. ADJOURNMENT**

Chair Pentin adjourned the Planning Commission meeting at 9:27 p.m.

Respectfully,

JANICE STERN  
Secretary