



## PLANNING COMMISSION MEETING MINUTES

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

**APPROVED**

**Wednesday, February 8, 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 February 8, 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 O'Connor.

### **1. ROLL CALL**

Staff Members Present: Brian Dolan, Community Development Director; Jonathan Lowell, City Attorney; Dave Spiller, Police Chief; Janice Stern, Planning Manager; Steve Otto, Senior Planner; Rosalind Rondash, Associated Planner; 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**

There were no revisions or omissions to the agenda.

**5. CONSENT CALENDAR**

- a. **P11-0981, Chinese Church in Christ**  
**Application for a Conditional Use Permit to operate a church at 5064 Franklin Drive. Zoning for the property is Planned Unit Development – Industrial/Commercial-Office (PUD-I/C-O).**

**Commissioner Narum moved to make the required Conditional Use Permit findings as listed in the staff report and to approve Case P11-0981 subject to the Conditions of approval listed in Exhibit A of the staff report. Commissioner Blank seconded the motion.**

**ROLL CALL VOTE:**

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

Resolution No. PC-2012-06 was entered and adopted as motioned.

**6. PUBLIC HEARINGS AND OTHER MATTERS**

- a. **PCUP-273/UP-90-43, Diamond Pleasanton Enterprises**  
**Consideration of a possible modification of conditions of approval or revocation of a Conditional Use Permit for the operation of Club Neo located at 4825 Hopyard Road. Zoning for the property is PUD-I/C-O (Planned Unit Development – Industrial/Commercial-Office) District.**

Commissioner O'Connor recused himself due to a conflict of interest.

Rosalind Rondash presented the staff report and described the background, scope, and key elements of the subject Conditional Use Permit. She noted that Police Chief Dave Spiller is present to respond to any questions regarding safety; also present are Jenny Wolfes, Attorney George W. M. Mull, building owner Gene Havrilenko of FFHS Associates, and James Paxson, General Manager of Hacienda Owners Association.

Commissioner Blank noted that the condition of approval about the security plan did not specify when that final security plan had to be submitted to the City. He inquired if there was any responsibility by the City for knowing that this club has been open but yet did not have a security plan.

Ms. Rondash replied that it was an oversight in the City's process that there was no language submitted and approved in that regard when the zoning certificate to change the business name was approved.

Chair Pentin stated that he was under the impression that the security plan was supposed to be in place prior to operation. He inquired if that was what was originally stated.

Ms. Rondash replied that was correct.

Commissioner Blank inquired if the City had any idea what was going on in the year or so after the club reopened and was in operation before the fourth quarter, prior to October of 2011 when the first incident occurred.

Ms. Rondash replied that the business owner could speak on the club's business operations at that time.

Commissioner Blank inquired if there were any significant number of incidences that came to attention of the City prior to the fourth quarter of 2011.

Ms. Rondash said no, there was not a significant number of incidences.

Commissioner Narum inquired what the basis was for changing the language of the revised Condition No. 24 regarding requiring the TIPS Training to be within 45 days instead of four weeks.

Ms. Rondash replied that in staff's meetings with the applicant and the Police Department (PD), it was determined that there was a timing problem with the processing of the trainings as well as the issuance of those certificates. She explained that in order to make the Condition more appropriate and attainable for the business owner in relation to the required training, staff had adhered to and respected the timelines that were actually in place for those trainings and those processes.

Commissioner Narum stated that it was her recollection when the Commission approved this Use Permit in October 2010 that there was a condition that there were no in-and-out privileges. She indicated that she could not find this in the revised conditions.

Ms. Rondash replied that Condition No. 1 requires that the operation of the business be as stated in the submitted narrative, which, it was her understanding, was how the operator wanted to run the business.

Commissioner Narum inquired if that was enforced now or is part of what they should be doing prior to tonight's meeting.

Ms. Rondash replied that the same written narrative would still be what is being referenced, and, therefore, it would still be a requirement. She deferred to the Police Chief to indicate whether or not this is actually being done.

Commissioner Blank requested verification that staff did not know and did not have an independent way of knowing whether or not this was enforced prior to the incident or since the incident.

Ms. Rondash replied that Planning staff has not been to the establishment in the evening to observe that; however, police officers who have patrolled the establishment may be able to speak to whether the business is actually allowing in-and-out privileges. She added that this would be something officers who patrol the establishment in the future would be looking at more closely.

Chair Pentin inquired if the narrative Ms. Rondash was referring to is the Status narrative that was received on June 28, 2010.

Ms. Rondash said yes.

Following up on Commissioner Narum's question regarding requiring the TIPS Training within 45 days instead of four weeks, Chair Pentin noted that this refers to new employees and inquired if this would also be required of current employees or if they would just be considered grandfathered in at this point and then be required to receive training after 45 days.

Ms. Rondash replied that it applies to all employees within 45 days of their original hire date, with follow-up training to occur every six months. She clarified that existing employees would also have to undergo training every six months.

Chair Pentin inquired if those who are working there now and have not had TIPS training would be required to have it within 45 days; that starting now, every employee would be considered a new employee with this Conditional Use Permit as the "original hire" date.

Ms. Rondash replied that was correct.

Commissioner Olson inquired if staff knew if the individual who did the shooting was, at some point, inside the Club.

Ms. Rondash replied that the Police Chief could speak to that.

Chief Dave Spiller stated that because a suspect has not been identified at this time, he could not substantively say whether that person was in the Club or not. He noted, however, that some of the PD's intelligence and investigation indicate that it is highly likely that the suspect was inside the Club at some point.

Commissioner Olson indicated that the reason for his inquiry is because this would go back to the security procedures at the Club, if, in fact, a person with a firearm was allowed in the Club.

Ms. Rondash explained that one of the conditions requires a Scanshell 800 ID scanner that would scan the ID of everybody entering the Club; therefore, the person who was shot and the people who were in the Club just prior to, at the time of, or subsequent to the shooting would have had their ID's scanned.

Commissioner Blank stated that he is a security, risk, and fraud analyst and noted that fake ID's are relatively obtainable. He added that short of installing a metal detector, it would be close to impossible to keep firearms out of the Club.

Ms. Stern indicated that Condition No. 17.e. also requires all patrons to be searched with a full pat-down and the use of a metal detector as well.

Ms. Rondash clarified that this would work if the customers were attempting to conceal the weapon but would not really control what happens outside the club.

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

George W.M. Mull, Counsel representing Diamond Pleasanton Enterprise, Inc., Business Owner, stated that he appreciated the City's concerns and that they all of this very, very seriously. He clarified for Commissioner Olson that the shooting that took place in January occurred after closing in the parking lot, so there was no indication that there was a firearm ever allowed in the Club. He added that they enforce security pat-downs of every single person by a gender-appropriate person and that they use a metal detector wand and that there is no indication that a weapon was brought into the Club that night. He noted that that these are unfortunate incidences that did happen and asked for the Commission's understanding that they have the same interests and are on the same page as the City.

Mr. Mull stated that Club Neo is an extremely well-run club with security that is well above and beyond anything that the Conditions of Approval call for, but certain incidences have happened even with that level of security. He noted that on the night of the shooting, there were 29 security officers on duty, patrolling inside the Club as well as in the parking lot, managed by their Security Coordinator, a twenty-year veteran of the San Jose Police Department who was in charge of the San Jose entertainment district and had run security for very large events at the Shoreline Amphitheater. He added that they are using the most sophisticated approach and the most trained persons, but things still happened.

Mr. Mull stated that his client, Ms. Wolfes, was before the Planning Commission in 2010, and based on the conditions that were put in place then and the amount of occupants that were allowed, she decided to move forward and invest in this club and open it with the idea that they would have 812 people. He noted that the club operated through the

last quarter of last year without incident, and these incidences in question did not actually occur in most of the last quarter, with the first one taking place toward the end of December, and then another one unfortunately happened in January. He indicated that these incidences had nothing to do with how the club was marketed or with the change in name and reopening as Club Neo in October.

Mr. Mull stated that the club has had an increasingly African-American presence. He added that many times in the nightclub industry, an unfortunate term is used – but one used all the time – that that is when the place started to go dark. He indicated that they have talked to the Police and have had very good relations with Lt. Knox who works that area in the evenings. He noted that the incidences took place anyway, not because of the dance music or the way the club was managed. He stated that both incidents in December and January happened at closing time, after the lights were turned on, and people were being moved out. He added that in the January incident, some fights started inside the club, and their security was on top of it and moved everybody outside the club. He continued that about a half-hour later, there were still people in the parking area and the shooting took place. He indicated that they have been told by their intelligence that it took place while a car was driving by, but they were not exactly sure how that happened.

Mr. Mull stated that their security person is trying very hard to work with Pleasanton Police and the other officers to move people out and do the right thing. He indicated that this is not a thing where they can look and say that there was some shortfall or shortcoming in their security plan; the incident happened, even with the best of security. He noted that the number of security officers that night was three times what is required in the Conditional Use Permit; they were very well-trained and did their job, but still something went wrong.

Mr. Mull stated that what they are positing to the Planning Commission is not to cut down the maximum number to 300. He indicated that he is not sure of the sociology behind this urban crowd that has, for whatever reason, taken it upon themselves to come to this club. He added that, without coming straight out and talking about racial profiling, what they would like to do is change the nature of the people coming to this place by having a different format as a choice that his client has made. He stated that this is something that they have heard feedback about from Police and from other cities that he believes would be a good idea. He stated that he, as a parent of a 16-year-old, and his girlfriend with her 16-year-old, had a party at their house a couple of years ago and with social networking ended up with 250 children showing up although they had no intention of having more than ten of them there. He added that, for whatever reason, this club, which is in Pleasanton, had certain people on the Internet, with Facebook pages and other means, telling everybody to please come, and out of the blue, their club was hi-jacked.

Mr. Mull indicated that they want to fix this. He stated that they are on the same page as the City and that it is not a good thing to come in here and have the maximum number of customers knocked down to 300. He noted that this is an approximately

10,000- square-foot club, for which they pay a quarter-of-a-million dollars in rent to Hacienda Business Park. He added that this is a very expensive club, and the amount of security they pay for is very expensive as well. He added that cutting it down to 300 patrons does not pencil-out; there is no way to do the calculations on the amount of expense and still have the Club open, and it would be just as much a revocation of this club. He noted that 300 of the wrong crowd is not going to help Pleasanton or the operator; all it took was one bad person shooting another in the parking lot.

Mr. Mull stated that they would like to have 800, the number in the occupancy, of good people, in the same manner that there could be 500 people out in the Hilton. He stated that there is nothing intrinsic about the club that should cause these problems, and what they would like to do is change the crowd. He noted that they have approached the premiere Northern California Latin Music Promoter, a group out of San Jose that does very large events at the Staples Center, at the San Jose Convention Center, at the Shoreline Amphitheater, and works with a major promoter called Live Nation. He further noted that this promoter likes the club's space and would like to work with the club. He added that they will bring an excellent crowd that does not have the same problems as the urban crowd that they have been hi-jacked with these last six weeks. He indicated that In order to make that happen, they would have to make the promoter's expectations in profit come through, and limiting the capacity to 300 will not only kill that but will also leave them with the same 300 people with the same problems.

Mr. Mull stated that he believes the better way to solve this is not by reducing the numbers but to change their formatting. He indicated that when they came forward with a half-million-dollar investment, it was done with the idea that there were the resources, that there was due diligence on the part of the Planning Commission who looked at the conditions and figured that this was something that the Pleasanton PD and staff could deal with. He pointed out that now they are hearing that this is a strain on Pleasanton's resources. He compared it, as far as investment expectations are concerned, to coming to Pleasanton in 2010 with a request to approve an eight-story building, and when a small fire incident occurs on the lower floors, the City then comes back saying that the ladders on the fire trucks go only to the third floor so the top five floors should not be utilized. He added that knocking 800 down to 300 is equivalent to knocking down their expectations of being able to have a profitable club, assuming it is sustainable.

Mr. Mull stated that they are definitely willing to work with the PD in every way to make sure that the Police's concerns are met and to come up with systems in place to ensure the safety of their patrons. He added that they have just as much, or even more, interest in that as the City. He asked the Commission to allow them to make this shift, and if they have similar problems after the shift, they can then approach a reduction potentially as one way to address these problems. He noted that cutting down to 300 handcuffs them and makes it impossible to make these changes that they think are in the best interests of the club, the City, and the landowner. He added that if this change happens, they will be gone, the landowner will have no rent, and there is probably no one else in this economy that is going to open up a business at this location, which is not appropriate for another restaurant because it does not have frontage on Hopyard

Road. He noted that the location will probably be another empty space causing vacancy and blight.

Mr. Mull stated that they have already put in place many of the changes in the conditions that staff has recommended. He added that, as a side note, they would like to be able to serve until 1:30 a.m., which would still give them time to close down the club in an orderly manner before 2:00 a.m. He noted that it is really not a night club if everything turns off at 1:00 a.m.

Commissioner Blank inquired how the club controls the number of people who enter the club and how they know when to cut off at 812.

Mr. Mull replied that they have a clicker. He added that as far as they know, they have never come close to that 812 number; it has always been around 550.

Commissioner Blank noted that Mr. Mull mentioned that they use the most sophisticated approach to maintaining security. He asked Mr. Mull to describe what this is and inquired if every one of their security personnel is equipped with a two-way radio.

Mr. Mull replied that he believes they have about 16 two-way radios.

Commissioner Blank noted that the answer is then “no.”

Mr. Mull clarified that the 16 radios for the rovers is a lot. He indicated that the required number of security officers, even if all 800 patrons were there, would be 16.

Commissioner Blank noted that Mr. Mull had stated that the club had 29 security personnel.

Mr. Mull stated that those last evenings, they had concerns so they brought in additional security personnel.

Commissioner Blank inquired what training someone who wanted to be a security officer would go through.

Mr. Mull replied that most of their security personnel have already been working at another club in San Jose, so they have been trained by their already experienced personnel. He added that there are tests that they have to then take with the State to get a Guard Card.

Commissioner Blank requested clarification that there is a certification process that the club requires.

Mr. Mull said that was correct.

Commissioner Blank inquired what that process is called.



Mr. Mull replied that it is the Private Security Office Status, from the Department of Consumer Affairs, for the Guard and Security.

Commissioner Blank inquired if the twenty-year veteran in charge of the club's security was at the club the night of the shooting.

Mr. Mull replied that he was.

Commissioner Blank inquired if he carries a firearm.

Mr. Mull replied that he does not.

Commissioner Blank asked Mr. Mull to give some examples of any other sophisticated approaches that are used by the club's security officers.

Mr. Mull replied that basically, security begins with what is called fading of the crowd, when they make sure the persons are in compliance with the dress code. He noted that they have found that people who are dressed in a particular manner are more likely in some situations to cause trouble. He added that they also do not allow large groups to come in buses or limousines because that causes problems as well. He indicated that they try to avoid the problem from the outset by not letting them in the club. He continued that their identifications are then checked with the scanner, and they are then patted down as they come in to make sure they have no weapons.

Commissioner Blank noted that Mr. Mull indicated there is a scanner. He inquired if this was a metal scanner.

Mr. Mull replied that it is a scanner of the patron's driver's license that reports who each person is.

Commissioner Blank inquired if the scanner is hooked up to the California Law Enforcement Telecommunications Systems (CLETS) system, which checks for outstanding warrants or anything similar.

Mr. Mull said no. He explained that there is no way a private individual could do that, and they would go to jail if they did. He added that they are not able to approach that level of sophistication and that it would be a privacy violation anyway. He indicated that inside the club, there is a security guard at each external door and roving security officers within the bar area to make sure people are behaving themselves, and there are roving officers in the parking areas to make sure people move on. He continued that one of the issues they have had and he believes they have addressed well is, when they do fade or cause people not to be allowed in the club who then mill around and loiter, they move these people along. He added that if there is any kind of altercation, rather than throwing fuel onto what may be a volatile situation, there is an immediate

reaction to diffuse the situation by separating the persons involved from the rest of the club and taking them into a hallway to a back exit.

Commissioner Blank noted that he did not see and may have missed the condition mentioned by Mr. Mull specifying the required number of security officers.

Mr. Mull replied that he did not see that either but that during the last meeting they had last week, it was reiterated that they were still at the one security person per 50 patrons.

Commissioner Blank inquired if that ratio is per the industry standard.

Mr. Mull replied that the industry standard is actually one person per 100 patrons. He noted that they are willing and very happy to go above that.

Commissioner Blank asked if the ratio on the night of the shooting incident was one per 28.

Mr. Mull replied that was probably correct.

Commissioner Blank inquired if the conclusion was that at least it was sufficient for that evening.

Mr. Mull replied that there were fights that broke out in the club and were immediately dealt with and moved outside the club. He noted, however, that no number of officers could have prevented somebody from driving by and taking a shot at somebody, even if there were one hundred officers. He noted further that there were Pleasanton Police Officers nearby and were there when the incident took place, so it was not necessarily a breakdown in their security staff in any way that led to that unfortunate incident.

Commissioner Pearce noted that Mr. Mull mentioned that a scanner has been used for checking ID's at the club. She inquired how readily available the data from that scanner would be in case there were an incident.

Mr. Mull replied that he believed the data are immediately available with the new scanner that was purchased right after this incident occurred. He stated that in their meeting with the Police Chief, they indicated that they would make that data as well as footage from the video camera system immediately available upon request right then and there. He added, however, that he is not sure if they might have to scroll through 500 different data points to find something.

Commissioner Pearce verified that it is immediately accessible, nevertheless, should an incident occur.

Mr. Mull said yes.

Commissioner Olson stated that when he read the staff report, he assumed that the number 300 came from a collaboration between staff and the PD. He noted that the applicant is requesting for a maximum of 800. He indicated that he has a problem with the applicant's statement that they move fights outside the club because at the point that they are out of the club, they would be in the community.

Mr. Mull replied that they would be in the parking lot, which is still on private property and not in the community, and it would still be contained.

Commissioner Olson inquired if the incident was contained outside on private property.

Mr. Mull replied that it was very much so. He indicated that they continued to address the issue until people got into their cars and left. He noted that they find it safer for everyone to get outside of the closed environment, away from those few in the crowd that are causing an altercation. He added that just closing the doors and keep them inside is not a positive thing; it is better to try to disperse the crowd.

Commissioner Olson inquired what the average attendance per night has been over the last six to nine months, and if it was close to 800.

Mr. Mull replied that he did not think it was quite 800. He indicated that he was not the operator and asked Ms. Wolfes if they knew what the average attendance is.

Ms. Wolfes replied that it was anywhere from 415 and up to about 700 or 750.

Commissioner Olson noted that there is quite a bit of room between 300 and 800.

Mr. Mull said yes and added that they are obviously very willing to work with the police on that. He stated that the number he had thrown out before that he thought sounded reasonable was 550.

Commissioner Narum stated that she rode with Lt. Knox and was at the club on Saturday night. She indicated that she recognizes the dress code is not part of this discussion, but inquired if the dress code is readily available for anyone going to the club.

Mr. Mull replied that it is actually posted on the wall before entering the club and that it is also on the club's website. He noted that there are certain things that are just not allowed such as athletic shoes, sagging pants, athletic jerseys, and things that some have said have some relation to gang activities.

Commissioner Narum requested verification that it is posted by the club entrance.

Mr. Mull replied that he believed it was and asked Ms. Wolfes.

Ms. Wolfes replied that there is a sign.

Mr. Mull stated that he has been to the club twice in the evening and that there is an A-frame type of sign in the line that lists the behavior conditions and the dress code. He added that it is also on the website.

Chair Pentin inquired if the sign is also in the lobby or out in the line.

Mr. Mull replied that it is in the line before the patron gets to the lobby.

Chair Pentin stated that he did not see that sign.

Commissioner Narum stated that she did not see it either when they went to the club. She then stated that there is bottle service available in the club. She inquired how they monitor the condition of the people at the table with the bottle service.

Mr. Mull replied that there are waitresses all throughout the bottle service area, and part of their job is to recognize any variation and take the same steps that a bartender would take to cut people off.

Relating to the in-and-out privilege, Commissioner Narum stated that while they were at the club, she noticed at least five to ten people who went out and came back in. She indicated that this gave her a bit of concern considering that this was not allowed but was actually happening while they were standing there with two uniformed Police Officers, and one would think that would be the one time when the club security would not be allowing it. She added that this also gives her a little bit of discomfort with some of the comments Mr. Mull had made as a result of that. She then inquired if there is food service.

Mr. Mull replied that there is minimal food service such as little sandwiches anyone can have.

Commissioner Narum inquired how patrons can order or get them.

Mr. Mull replied that there is a sign listing what food is available, which they can get from the bartender.

Commissioner Blank asked Mr. Mull, to the best of his knowledge, what time the shooting took place.

Mr. Mull replied that he believes it was right around 2:00 a.m. or 2:10 a.m. He noted that the club closes at 1:30 a.m.

Chair Pentin recalled Mr. Mull's analogy about the large building and having a fire truck that can only go up three stories and asked Mr. Mull if his position is, when they have a crowd they cannot handle, that even vested in this community as a business and they pay taxes, they expect police support as the amount of fire support that can handle any

story fire instead of a three-story. He inquired further, considering the amount of police response to just two of the incidents at the club, if he expects that the City should have that support.

Mr. Mull said no, not at all. He admitted that it does go to the analogy, but at the same time, the building owner and they have a responsibility to operate the place in a very safe way. He continued that to the extent that they have come to a conclusion similar to what the Police have that the current element and crowd is causing some inherent problems, they wish to change that. He noted that they have had a Conditional Use Permit at this building since 1990, and the club has been run well in many different ways for over a 22-year period before this element came. He added that there were probably fights and other incidences in the past but they were controlled. He indicated that they do not expect to continue like this, that it is not acceptable to them, and that they are taking a massive step to change to a Spanish rock/salsa type of environment which will completely change the folks coming. He requested the Commission to let them change it rather than knock it down to 300 and make it not possible to have a sustainable business.

Chair Pentin stated that from his point of view, all he can judge anything from is past performance. He added that he can look at whatever they are paying for music and whatever their clientele is, but for him, they are still a business, just like Nordstrom's is a business over at the mall, and he does not really care what music is played there or what the clientele is, as long as it runs its business safely and properly. He addressed Mr. Mull, indicating that he understands what he has presented to the Commission his job to minimize incidences. He pointed out to Mr. Mull, however, that he has really only spoken to two incidences as if there were just two of them in the last period of time, but the nightclub overview from Lt. Knox indicates multiple days and multiple incidences. He added that, for instance, when Mr. Mull mentioned that the fight was taken outside but it was still on private property, there were two others mentioned in the overview that were taken outside on private property. He asked Mr. Mull if that is okay too and if that is controlled.

Mr. Mull said no, it is not okay. He indicated, however, that they finally controlled them. He added that considering the history of the club, this operator has been operating for a year and a half, and the only times being talked about occurred in less than two months.

Chair Pentin stated that for the Commission, the history in the last three months and not just a couple of days, the club has had quite an interaction with the City's PD, and with Lt. Knox in particular.

Mr. Mull replied that he has also read Lt. Knox's report and that it really is only those two weekends; the others are very, very minor.

Chair Pentin indicated that they have a difference of opinion on that.

Mr. Mull stated that it is right there in black and white with Lt. Knox. He added that they do not have a difference of opinion in terms of how important it is to change this. He reiterated that there has been a history of operation at this location for 22 years, and his client has an operational history of a year and a half. He asked the Commission not to let somebody else hijack their business, in which where they have invested half-a-million dollars, and basically shut it down, take a large portion of the Hacienda Business Park and turn it into an empty space, and have 40 or 50 people lose their jobs because some folks came from Oakland without being invited. He indicated that they would like these folks to go away also, and they think the way to do this is to allow the business to switch to a different format rather than reacting as if the club is going to have that same group there for the next year, which they do not want that to happen either.

Commissioner Pearce inquired if her understanding is correct that on the night of the incident in question, the fight broke out in the VIP area where the bottle service is located.

Mr. Mull replied that he thinks it broke out in several areas and not just in that area.

Commissioner Pearce requested verification that it included the bottle service area.

Mr. Mull said yes.

Commissioner Pearce recalled Mr. Mull's earlier statement that if people appear inebriated in the bottle service area, the waitresses cut them off.

Mr. Mull said that was correct.

Commissioner Pearce commented that this goes against all the information she has on bottle service. She asked Mr. Mull to describe how that area works because her understanding is that it is different from the regular bar area.

Mr. Mull stated that the waitresses bring the bottles and the mixtures that are used in those bottles, so they have the opportunity to see whether or not anybody is inebriated. He indicated that they have not had an issue that these incidents happen because of heavy inebriation. He noted that it is a strange thing with this crowd, which is not a heavy drinking crowd, as the club receive monies at the door for cover charges, but the amount of bar sales is really low in comparison to the number of people there.

Commissioner Pearce inquired if it is true that in a bottle service area, entire bottles of alcohol are purchased ahead of time.

Mr. Mull said yes, for groups of ten.

Commissioner Pearce pointed out that it is for groups of ten at a premium price as this is a VIP area.

Mr. Mull confirmed that it is a VIP area, but it is not necessarily based on individual drinks.

Commissioner Pearce indicated that she would like to walk through this with Mr. Mull. She stated that the patrons are purchasing arguably a few bottles of alcohol at one time that they then have access to with the waitress's help. She noted the Mr. Mull is saying that even though the patrons have purchased entire bottles of alcohol, if they appear inebriated, the waitress is going to cut them off and take away the alcohol.

Mr. Mull replied either that or security will have a discussion with them.

Commissioner Pearce indicated that she is just trying to understand the operations of the club.

Mr. Mull stated that the patrons are not left on their own just with bottles, with no one going through and seeing them. He indicated that there is staff in the VIP area, and there are waitresses who are constantly checking to see if they want food or an additional drink.

Commissioner Narum inquired, if there are people at the table with a bottle that they have purchased at a pretty good premium, and if the waitress starts seeing the people at the table inebriated, how do the waitresses cut them off, if the bottle they have purchased is taken away, and what happens if only two or the ten people are inebriated.

Mr. Mull replied that it is difficult, but they have a talk with the patrons and ask them to leave. He indicated that one of their obligations under the ABC rules is to not serve inebriated people, whether through a bottle service or through a bartender. He added that it is important that they comply with that or they put their license at risk.

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

Commissioner Pearce noted that there has been a lot of discussion about capacity. She inquired how the 812-person capacity was initially determined initially at this club, and assuming there is a formula, what the breakdown is.

Ms. Rondash replied that it was part of the applicant's proposal in 2010 to increase the capacity up to 812, based on the assumption of what the space could hold. She indicated that fire codes have a calculation for the fire safety occupancy based on space. She noted that Planning staff also circulated the request through the Fire and Police Departments, and determined that staff could support it as it had operated historically without incidences, and the operator had a good track record with other clubs.

Commissioner Blank recalled that the Commission had another one of these cases a while ago with a restaurant; it did not result in a shooting, but there were a lot of

complaints from the tenants in the area, and the Commission held a revocation hearing for that particular operator. He stated that he looked at Exhibit I, Lt. Knox's report, and after crossing-off meetings, was left with quite a few incidents. He indicated that he is kind of torn on this one and is asking himself if the applicant should be given an opportunity as was the other operator to demonstrate that they can operate the club safely. He added that as a security person, he personally believes that in addition to the security plan, the security officers have to have an earpiece in their ear and know what is going on; otherwise, they cannot react to an incident. He continued that the thought occurred to him, at least in terms of figuring out a way to demonstrate the same fairness that the Commission demonstrated with the other operator, that the Commission consider a combination of things. He noted that one would be reducing the number, but he is uneasy with 300 and finds that it could in fact be so punitive that the club might not be able to function. He added that there is a need to have the same kind of monitoring that occurred with the other operator where the Commission is given regular reports. With respect to security, he noted that making his living in that business, he respectfully disagrees with Mr. Mull that the club uses the most sophisticated approach to security and indicated that security needs to be bolstered.

Commissioner Olson stated that his sense is that 300 is coming from the PD, based on experience, on resource allocation, and the City's budget. He indicated that should he decide not to vote to revoke the Use Permit, he is very reluctant to go much over 300 and that 800 is totally out of the question. He stated that people know him to be as business-friendly as any of the Commissioners, but he is really concerned about this. He noted that this has really shaken this community and that the operators are fortunate that the PD is not arguing for revocation of the Permit. He indicated that he is open to some minimal amount over 300 and would like the PD to weigh in on that number.

Commissioner Pearce stated that she went out to the club with Lt. Knox and had an opportunity to see the club, see the operation, and talk to the police officers out there who were very accommodating and answered all her questions. She indicated that she is not inclined to go over the number recommended by the PD, whose officers have been gracious and very accommodating to the club; in fact, her inclination is to take the action of going to 250 for a period of time, then have the operator come back in a month or two and see how they are doing with that number, and if that seems to be going fine, raise it to 300, and then maybe at a future point, raise it some more. She added that she would put much more stringent guidelines temporarily to see how it goes.

Commissioner Narum generally agreed with Commissioner Pearce. She stated that she would take the 300 limit, which she believes is what the PD is recommending, and put the club on a pretty frequent monitoring. She added that she would be open to increasing it if the PD is comfortable with it. She indicated that it is just a little bit hard for her, and she can empathize with the business and the landlord and try to figure the rent and the business; but at the same time she is a bit uncomfortable standing outside the club and watching people going in and out being led by security people. She indicated that she would support Option 4 which includes close monitoring, and if things are clean and the police are comfortable, that number can be eased up.



Chair Pentin stated that he agreed with pretty much everything that has just been said and that if he leans towards anything, based from his experience of Saturday night at the club and reading the narrative from Lt. Knox, his first inclination would be to revoke the Permit. He indicated that he is business-friendly; however, he does not see, over a period the last three months, the club really complying with the conditions of approval in the Conditional Use Permit, especially with the amount of work the PD has done with you. He added that he did not see it either on Saturday night, where there was loitering in the parking lot and patrons going in and out. He noted that he was told there were about 230 or 240 people in the club between 12:00 a.m. and 1:00 a.m. on Saturday, and he could see where another 70 people spread out through the club would probably be manageable; but not 500 or 600 or 700 in that same space and with the type of security he observed.

Chair Pentin stated that his bigger concern is what is being required of the City's PD personnel to do if they have to support the club: going to the parking lot to stop a side show or going into the club to stop fights puts them in harm's way and is not appropriate. He noted that that is not what the City wants businesses in Pleasanton to present; it is one thing for the City to provide police services, but it's another thing for them to babysit. Referring back to Mr. Mull's analogy of the eight-story building with a three-story ladder, he stated that he does not believe the PD is responsible for the club's problems and issues, and the club has a history of them. He indicated that his recommendation is, being generous on his part, to move on with Option 4 and then allow for a review by the PD in 30 days or 60 days, whichever the PD thinks is appropriate, on how the club has been able to change its format, change its personnel and improve its security, and so forth.

**Commissioner Blank moved to modify the Conditions of Approval for the operation of Club Neo, per Exhibit A and as outlined in Option 4 of the staff report.**

**Commissioner Narum seconded the motion.**

**Commissioner Blank proposed an amendment to have staff draft a new condition, through a joint effort between the Police Chief and the Director of Community Development, concerning security and communications.**

Commissioner Blank stated he has been involved with securing events, and it is his belief that good security practices include every single person in security is in uniform and every single person in security has a radio, and there be a direct line of communication between the club and the Pleasanton PD.

**Commissioner Narum accepted the proposed amendment.**

Mr. Dolan stated that staff would be happy to do that. He noted that he thinks it might be useful, before the Commission takes a vote, if the Police Chief explains the rationale and number and why staff chose the Option 3. He indicated that staff has had a lot of

internal discussion about this with a very thoughtful approach, and he would like to give the Police Chief the opportunity to address the Commission.

Commissioner Narum stated that she has another amendment and would like to present it before the Chief speaks so he can comment on that as well. She noted that when they were at the club, she did not see the A-frame sign on the dress code, and she believes that people standing in line should see and know that before they get to the entrance and not be admitted. **She indicated that she would like to see a condition that requires the operator to have a sign on the dress code both at the site and on the club's website.**

**Commissioner Blank accepted the amendment with a further modification that the sign be subject to the review and approval of the Director of Community Development.**

**Commissioner Narum accepted the additional language.**

Chief Spiller stated that they have had a lot of discussion with the owner/operator, who has been very cooperative with the PD staff, and have been receptive in terms of working through the PD's concerns, including working on modifying the security plan.

With respect to the capacity, Chief Spiller stated that as they have looked at the incidents that have occurred, the density or intensity of attendance at the club is kind of directly related to those problematic events. He continued that in looking at their response capability without significant impact to the community, the number of 300 or less is the number they came up with that's manageable for the area within the business as well as managing the outflow at the end of the evening. He noted that while nightclubs and businesses like this can impact law enforcement resources, which is not at all unusual, the incidents that occurred when they were in the 500/600/700 capacity actually significantly crippled the PD's ability to respond to other calls for service. He added that the City's PD relied on mutual aid protocols throughout the area of the county to not only manage Pleasanton's calls for service, but to get appropriate resources to this establishment. He noted that with his experience and in having worked very closely with his management staff that has been responsible for this project, he is very confident that 300 or less is that number in terms of our ability to manage this operation.

Commissioner Blank stated that he understands that Option 3 is the preferred option, but would like to explain that the reason he made the motion for Option 4. He indicated that Chief Spiller will have noted that all the Commissioners have stated that they do not look at increasing the occupancy lightly and that he would ask that the Chief be brought back to the Commission before the Commission increases that number. He added that if the owner or operator of the club goes a month or two months or whatever time period decided upon and has a perfect record, then maybe the Commission could let them increase to 350 or some incremental number. He indicated that he does not want to sound too metaphysical, but he believes that people can create positive environments,

and he would like to give people a chance to succeed. He emphasized that he just does not want to permanently limit the club to 300 without giving the operator an opportunity and an incentive to maybe increase to 400 or whatever that number might be down the road.

Chief Spiller stated that he totally understands that. He added he thinks the pattern of appropriate operation and effective management of the facility will certainly create the opportunity to increase that number.

Commissioner Pearce thanked Chief Spiller and reiterated that she does not necessarily want to start at the maximum number. She indicated that she likes the idea of monitoring and having them come back in a couple of months. She noted that she heard what the Chief had to say and that 300 is the maximum right now that the PD is recommending. She added that she is not comfortable with starting at the maximum and then considering upping that in a month or two months, but would prefer to start a little bit lower and then with frequent monitoring, see where they are and then have the flexibility to move it up with 300 as the maximum.

**Commissioner Olson proposed an amendment to change the language of the original motion to 250.**

**Commissioner Blank accepted the proposed amendment.**

**Commission Narum indicated that she is not accepting the proposed amendment and withdrew her second.**

Commissioner Blank inquired is 275 is acceptable.

Commissioner Narum commented that they are splitting hairs here.

Chair Pentin stated that he is comfortable with 300, knowing that they have run the club with much larger numbers over its history, just not in the last 90 days or 100 days. He added that he is comfortable with what the Police Chief says that 300 will work. He noted that the Commission is giving an "out" here that it could be dropped back; the Commission can look at it and can say that while the operator has actually adhered to the conditions of approval, it just has not been enough time and the Commission does not want to increase the number. He pointed out, however, that in fairness to the business, they have already indicated that they cannot even do it at 300.

Commissioner Narum emphasized that she would not in any way entertain increasing the number without having the Chief say that the PD is comfortable with the number and believes they have a handle on it.

**Commissioner Blank proposed another amendment that if some incident occurs that may not be reported in the local newspaper or in the media or the incidents continue to occur, staff notify the Commission immediately so that this can be scheduled for the very next meeting with the appropriate notice.**

Commissioner Pearce requested clarification that Option 3, and not Option 4, is the option recommended by the Chief of Police and the Director of Community Development.

Commissioner Blank indicated that he has explained why he chose Option 4.

Commissioner Pearce stated that she does not hear support for starting at 250 and moving it up to 300, but hears support for starting at the maximum number and then moving up.

Commissioner Blank noted that it would be only if a certain set of conditions are met.

Commissioner Pearce said that she hears this, despite the fact that it is a numbers game, and what the Chief was saying that the PD does not have the personnel for the larger numbers despite the lack of incidences. She added that she just wants to be fair.

Commissioner Blank asked Commissioner Pearce if she is prepared to say that if this club went two years without a single incident, she would not increase the number above 300.

Commissioner Pearce replied that she is not talking two years but two or three months.

Commissioner Blank stated that he is not suggesting that after two months, the Commission automatically increases the number. He explained that what it says is that within the next 30 days, if the club complies with all the different approvals, the Planning Commission can consider increasing the number. He added that the Commission can still say no.

Chair Pentin added that staff and the Chief of Police will have to come back and say that it's okay to increase the number, and if they do not, then he is not moving off of 300.

Commissioner Olson stated he is not either.

Commissioner Blank agreed.

Commissioner Pearce stated that the Commission ought to be very clear about that then.

Chair Pentin indicated that he thinks it is very clear.

Commissioner Narum indicated that she agrees that if Chief Spiller comes back and says he is not comfortable, there is no way she will vote to increase that number.

Commissioner Pearce noted that in the previous application when the operator came back with a chart and showed there were no incidences, the Commission just approved it.

**Commissioner Blank proposed the following language: “Prior to coming back to the Planning Commission to entertain an increase, the applicant must have the positive recommendation of both the Police Chief and the Director of Community Development.”**

**Commissioner Olson withdrew his amendment to bring down the number to 250.**

**Commissioner Narum re-instated her second with the addition of the two proposed amendment.**

The Commissioners unanimously agreed that the proposed language works for them.

Commissioner Narum stated that it was her impression from her conversation with Lt. Knox and Officer Fragomeli that after the club closes down, an officer goes through the parking lot looking for bottles and trash to see if the club has cleaned up or not. She asked Chief Spiller if that really an appropriate use of the police and if there is a reason for that, and if that is not really something that is between the property owner and the club and the tenants in the building.

Chief Spiller replied that as it relates to this particular staff report and reporting back to the conditions imposed on the operator, he did not think it is necessarily inappropriate; however, it falls into the PD’s management for calls for service. He indicated that the PD is certainly not going to pin calls or impact its responses to what has been reported in the community; however, at the end of a busy night at a bar, PD might be looking for other things in addition to trash and bottles. He noted that people who are left behind are obviously intoxicated people, and the PD will check for if they are under the influence and drugs and things like that. He concluded that he is not specifically aware of what was offered to Commissioner Narum by the PD staff, but there are a lot of reasons that a police officer might be doing line patrol or area patrol near an establishment like this.

**ROLL CALL VOTE:**

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

Resolution No. PC-2012-07 approving Option 4 as modified was entered and adopted as motioned.

Commissioner O'Connor returned to the Council Chamber.

**7. MATTERS INITIATED BY COMMISSION MEMBERS**

Commissioner Narum commented that as a Planning Commissioner, her experience riding with Lt. Knox was enlightening, hearing the perspective of a Police Officer who is now taking a Conditional Use Permit and having to go and enforce it. She noted that it this would be a good thing to have for every new Commissioner as it ties things together. She indicated that the Commissioners sit and discuss these things and craft conditions, but these are then left to the Police Officers to enforce. She added that she was struck as Lt. Knox explained that they now have the conditions scanned in and the Officer can bring them up on a computer and check. She continued that one thing the Commission can do as a body to help in this situation is to try and standardize some of these conditions as much as possible so that it is easier for the Officer to remember and enforce.

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

**a. Future Planning Calendar**

No discussion was held or action taken.

**b. Actions of the City Council**

No discussion was held or action taken.

**c. Actions of the Zoning Administrator**

No discussion was held or action taken.

**9. COMMUNICATIONS**

Commissioner Blank stated that he has not seen any material on the Historic Preservation Task Force meeting and inquired if it was still scheduled for February 23, 2012.

Ms. Rondash replied that the meeting is still scheduled for February 23<sup>rd</sup> and that notification cards would be sent out this week. She added that the packets, which include a lot of information and some maps, are being finalized and will also be sent out shortly. She noted that the meeting will start at 6:30 p.m. at the Century House on Santa Rita Road, an appropriate location for the kick-off meeting.

**10. REFERRALS**

No discussion was held or action taken.

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

Commissioner Pearce indicated that the first meeting of the Historic Preservation Task Force meeting is scheduled for February 23, 2012.

**12. ADJOURNMENT**

Chair Pentin adjourned the Planning Commission meeting at 9:20 p.m.

Respectfully,

JANICE STERN  
Secretary