



## PLANNING COMMISSION MEETING MINUTES

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

**APPROVED**

**Wednesday, December 14, 2011**

*(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 December 14, 2011, was called to order at 7:00 p.m. by Chair Kathy Narum.

**PLEDGE OF ALLEGIANCE:** The pledge of allegiance was led by Chair Narum.

### **1. ROLL CALL**

Staff Members Present: Brian Dolan, Community Development Director; Janice Stern, Planning Manager; Julie Harryman, Assistant City Attorney; Wes Jost, Development Services Manager; Steve Otto, Senior Planner; Shweta Bonn, Associate Planner; Rosalind Rondash, Associate Planner; Jenny Soo, Associate Planner; and Maria L. Hoey, Recording Secretary

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

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 changes to the Agenda.

**5. CONSENT CALENDAR**

There were no Consent Calendar items for consideration.

**6. PUBLIC HEARINGS AND OTHER MATTERS**

**a. PUD-85-08-02D-03M, Mercedes Benz**

**Application for PUD Design Review approval to construct an approximately 170,065-square-foot, five-story automobile service center and parking structure and to remodel the existing Mercedes Benz dealership building located at 5885 Owens Drive. Zoning for the property is PUD-I/C-O (Planned Unit Development – Industrial/Commercial-Office) District.**

Shweta Bonn presented the staff report and described the scope, layout, and key elements of the application.

**THE PUBLIC HEARING WAS OPENED.**

There were no speakers.

**THE PUBLIC HEARING WAS CLOSED.**

**Commissioner Blank moved to approve Case PUD-85-08-02D-03M, subject to the Conditions of Approval listed in Exhibit A of the staff report. Commissioner Olson seconded the motion.**

Commissioner Olson indicated that he was happy to see a major car dealership remain in Pleasanton.

Chair Narum agreed.

**ROLL CALL VOTE:**

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

Resolution No. PC-2011-46 approving Case PUD-85-08-02D-03M was entered and adopted as motioned.

- b. PGPA-17 and P11-0904 through P11-0937, City of Pleasanton Recommend approval to the City Council of: (1) the Supplemental Environmental Impact Report documents for the General Plan Housing Element and Climate Action Plan; (2) the Draft Housing Element of the General Plan; and (3) General Plan amendments (GPA), Specific Plan amendments (SPA) and/or rezonings of 17 sites to allow multi-family or single-family residential development or mixed-use (including multi-family residential) development.**

Janice Stern presented the staff report, stating that the “project” for the Draft Supplemental Environmental Impact Report (SEIR) consists of the Draft Housing Element, the potential rezoning and redesignation of up to 17 sites to accommodate additional multi-family residential development, and the Draft Climate Action Plan. She explained that the Draft SEIR augments the EIR prepared for the 2005-2025 General Plan, and the residential development generally replaces commercial development, resulting in fewer impacts.

Ms. Stern briefly described the different environmental topics – aesthetics, air quality, biological and cultural resources, greenhouse gas emissions, geology and soils, hazards and hazardous materials, hydrology, land use and planning, noise, population and housing, public services and utilities, recreation, and transportation and traffic – and the selected mitigation measures, which include maintaining the view corridor of the ridge; dust control measures during construction; preparation of Health Risk Assessments and indoor air quality improvements, if necessary; pre-construction surveys on birds, bats, and burrowing owls; protection of creeks and riparian vegetation; archaeological monitoring; Phase 1 environmental assessment; limitation on hours of construction; noise mitigation measures; and payment of impact fees.

Ms. Stern noted that development facilitated by the General Plan Amendments and the rezonings has the potential to result in two significant and unavoidable impacts:

- It may adversely change the significance of historic resources on Sites 6 and 21; and
- It may adversely impact the regional roadway network: First Street between Vineyard Avenue and Stanley Boulevard, and Hopyard Road between Owens Drive and I-580.

Ms. Stern indicated that comments on the Draft SEIR include those received at the public hearing on October 26, 2011, and written comments received from ten agencies, Pleasanton residents, and site property owners. She added that staff-initiated clarifications were also made. She then noted the changes made to the Draft SEIR, as follows:

- The Water Supply Analysis was updated to include maximum development scenarios;
- The project description and covered land use changes were clarified;
- Mitigation for sites with potential air quality impacts was clarified;
- Sites potentially exposed to airport noise were corrected;

- Corrections to statistic and minor word changes in School Impacts section were made; and
- Potential visual impacts on Site 7 were clarified.

Ms. Stern then stated that the Planning Commission would take two actions on the Draft SEIR: (1) Take comments from the public regarding the completeness and adequacy of the Draft SEIR documents; and (2) Recommend approval to the City Council.

Commissioner Blank inquired where in the Draft SEIR the correction to the airport noise could be found.

Ms. Stern replied that a couple of sites in the Hacienda Business Park were included in the requirements, and this is found on page 2-8 of the Response to Comments, Mitigation Measure 4.J-7 for residential development, where only Sites 11 and 14 remain; the others have been crossed out.

Ms. Stern then briefly described the progress of the Housing Element, indicating that the Draft Housing Element was submitted to the State Department of Housing and Community Development (HCD) by the deadline of August 16, 2011, and comments from HCD were received on October 14, 2011. She noted that the Settlement Agreement requires the City to adopt the new Housing Element by January 12, 2012. She referred the Commission to Exhibit G of the staff report, the Draft Housing Element Goals, Policies, and Programs with revisions made in December 2011; Exhibit H, the table showing HCD comments and key to staff responses; and Exhibit I, the inserts made to respond to HCD comments.

Ms. Stern continued that the Housing Commission reviewed the Housing Element and concurred with staff's recommendations regarding amendments to the programs and recommended stronger language for Policy 22 related to encouraging the development of affordable units. She added that there was consensus among the Housing Commissioners that more definitive language be used in programs, together with specific timelines and quantified objectives; and that staff should respond to all HCD comments. The Commission further recommended that staff move forward with the process.

Ms. Stern summarized the responses to HCD comments as follows:

1. Additional information on:
  - Extremely-low-income households and what they pay for housing;
  - Housing needs of developmentally disabled households;
  - Suitability of non-vacant sites for future housing;
  - Suitability of the C-S (Service Commercial) District as a homeless shelter location; and
  - Inclusionary housing as a constraint to housing affordability

## 2. New/Amended Housing Policies/Programs:

- Added “extremely-low-income” to programs;
- Additional quantified objectives and specific timelines;
- Commitment to adopt a density bonus ordinance;
- Commitment to adopt standards for multi-family housing;
- Policy 37: clarified that 100 percent affordable projects are acceptable;
- Added Program 41.9 regarding employee housing;
- Program 41.10: commitment to adopt a reasonable accommodation ordinance;
- Program 45.3: specified a minimum of \$1 Million from the Lower-Income Housing Fund would be made available to close the funding gap; and
- Program 46.1: specified that the C-S (Service Commercial) District proposed to allow emergency shelters.

Commissioner Olson stated that when he reviewed HCD’s letter, Exhibit C of the staff report, his reaction was that it was a daunting list of requests and requirements. He inquired what staff estimates is the percentage of what the City has done, if it has completed all the requirements or how much has the City accomplished.

Ms. Stern replied that staff has attempted to respond to all HCD and non-HCD requirements and requests.

Mr. Dolan added that where some requirements would take a long time to accomplish, staff has committed to a timeline as it would not be possible to complete them by the deadline.

Commissioner Olson inquired if this would be acceptable to HCD.

Mr. Dolan replied that HCD is aware that every Housing Element has issues like this, which are resolved by committing to accomplish them by a certain time.

Mr. Dolan then presented the potential housing sites, including their acreages and densities for rezoning, as submitted to HCD, and a map of all the sites within the City. He also presented the staff-recommended list of sites which represents a geographic distribution throughout the City and eliminates concentration of units in any one area; are mostly infill sites with existing utility infrastructure and street access and are near transit (BART or frequent bus), convenient freeway access, or within a job center; which preserves the Downtown site for the library or other civic use; and does not presuppose the East Pleasanton Specific Plan.

Mr. Dolan indicated that in response to some of the direction received, staff followed up on specific sites and revised the list accordingly:

1. Add more units to Stoneridge Shopping Center site. Staff spoke with the Simon Property Group, which indicated that it does not have any more area at the site, and asked about the possibility of increasing the number of units to 40 per acre.

Simon Property Group replied that this is a complicated product; it has not done any site planning and is not comfortable making a commitment without a design.

2. Reduce some of the development at the Auf der Maur/Rickenbach site. Staff looked at the site and ultimately recommended 30 units per acre. The site includes a small commercial development to serve the proposed number of units and the surrounding areas. It is next to a synagogue, and it could be rezoned as low density residential with less single-family detached units instead of leaving it as commercial. Eliminating the site from consideration or postponing the ultimate decision of the site will essentially bring in new players. If the entire site is not rezoned, there will be an awkward remaining piece which would remain commercial. It would be best to retain the proposed rezoning with no change.
3. Increase the density at CarrAmerica. CarrAmerica is concerned that without a full design, it might not be able to provide 40 units per acre. It is willing to move up to 35 units per acre and will explore what it might be able to propose.

Mr. Dolan indicated that the additional units at the CarrAmerica site, the City has a bigger cushion at 238 units and noted that staff is comfortable with that cushion. He stated that although this allows for the possibility of eliminating another site, staff does not recommend it. He added that all the recommended sites are good sites; however, if the Commission entertains that possibility, staff will focus on the Sheraton, Kaiser, Nearon, and one of the CM Capital sites.

Commissioner Blank requested clarification that staff is not recommending eliminating one site but is suggesting that it could be done if the Commission so desires.

Mr. Dolan replied that the possibility was pointed out to him.

Commissioner Blank stated that he wanted a confirmation of staff's position in the matter.

Mr. Dolan replied that staff is comfortable with having a cushion of 238 units.

Mr. Dolan continued his presentation by displaying a map illustrating the locations of multi-family housing in the four quadrants of the City, as earlier requested of staff.

Mr. Dolan concluded his presentation by indicating that there will be two more meetings on the SEIR and Housing Element:

- January 4, 2012: City Council certification of the Final SEIR, introduction of ordinances to rezone the sites, and approval of the General Plan Amendments and Specific Plan Amendments for the sites; and
- January 10, 2012: City Council second reading of the ordinances rezoning the sites and adoption of the Housing Element, which would make the City compliant with the terms of the Settlement Agreement.

Mr. Dolan indicated that the last step is to meet the deadline for the Climate Action Plan in February 2012. He noted, however, that this is not necessarily the end of all Housing Element discussion, as HCD will react to the Housing Element. He added that if HCD does not certify the document, it will give the City its reasons; the City will then have to decide if it wants to do what is being asked by HCD.

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

Chair Narum and Commissioners Pearce, Pentin, and Olson disclosed that they talked to the applicants for Site 7, Pleasanton Gateway; Site 8, Auf der Maur/Rickenbach; Site 9, Nearon; and Site 10, CarrAmerica.

Pat Costanzo, representing Site 11, Kiewit Properties, stated that he spoke at the Joint City Council-Planning Commission Work Session regarding why the Kiewit property should be included in the recommended housing sites. He urged the Commission to include the property in the list of properties to be rezoned because it had been one of the highest scoring sites throughout the evaluation process that occurred with over 20 public hearings. He presented a map showing the existing and property high density housing sites in the City and noted that the East Pleasanton area really has a very low percentage of the total units at 12.5 percent. He urged the Commission to consider distributing the multi-family housing more evenly throughout the City.

Mr. Costanzo stated that the City recommended to HCD that the East Pleasanton Specific Plan, including a funding and timing plan for the extension of El Charro Road, be completed and adopted by the second quarter of 2013. He requested that, should Site 11 not be included on the list for rezoning at this time, the Commission support this recommendation so that the allocation can be included in the next Housing Element Update residential rezoning in 2014. He indicated that Kiewit is willing and ready to get the work done in a timely manner.

Finally, Mr. Constanzo requested that Site 11 be identified as a "back-up" site to receive a rezone in the event that HCD disallow any of the current recommended sites or significantly reduces the density on any of these sites such that another site requires rezoning.

Nancy Allen stated that she would appreciate an explanation from Mr. Dolan regarding why staff is not recommending that the number of multi-family housing units be reduced now. She also inquired if having those extra 238 units at this time will benefit the City in fulfilling its housing requirements in 2014.

Ms. Allen expressed concern about the extra density being added to the Auf der Maur/Rickenbach property. She stated that she recognizes the challenge on this site given the consistent feedback from the community. She added that it is critical that there be balance, adding more commercial development or a shopping center and reducing the residential acreage from 11.3 acres to 8-9 acres or lowering the residential density.

Steve Dunn, representing Site 14, Legacy Partners, stated that he appreciated the opportunity to be involved in the process and commended staff and the Task Force for its work on the Housing Element Update process. He indicated that the Legacy Partners and Kiewit properties have been fully vetted. He concurred with Mr. Costanzo that multi-family housing has not been properly appropriated in the East Pleasanton area. He noted that the Legacy Partners site is fully developable and ready to go, with utilities and access out to I-580 through El Charro Road. He added that Legacy is looking at developing this site as a real community with the support of the Task Force, staff, and the City Council.

Mr. Dunn stated that he understands that the City wants to see the East Pleasanton Specific Plan completed first and recommended that, while waiting for the process to move, the City keep the timetable for the starting the Specific Plan by the first quarter of 2012 and completing it by the second quarter of 2013.

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

Commissioner Pearce inquired if staff would find it useful to have a schedule for the completion of the East Pleasanton Specific Plan.

Mr. Dolan replied that completing the East Pleasanton Specific Plan is very important, as outlined by Mr. Costanzo. He indicated that the City really needs to get moving on it to get ready for 2014, so then it can be done much more easily and on time.

Commissioner Pentin agreed with Commissioner Pearce and supported making it part of the Commission's recommendation to the City Council to include standing by the time frames for the East Pleasanton Specific Plan. He inquired if this is something the Commission should discuss at this point or at the Future Calendar section.

Mr. Dolan replied that staff would like to hear from the Commission if it agrees with this recommendation.

Commissioner Blank stated that it could be made part of the motion as a condition or approval.

Chair Narum stated that as a member of the Task Force, she noted that as the Task Force evolved, it was on the record that the Task Force expressed concern about submitting to HCD over 100 acres for rezoning and agreed to include on the final list to rezone only what the City needs to meet its housing requirements. She indicated that she would like to scale back the 238 extra units, almost eight acres, as this is something the Task Force committed to the community. She added that she is not sure how to do this and is open to discussion.

Commissioner Blank expressed concern about not having a buffer and getting too close to the required number. He indicated that he does not mind reducing it a bit but his sense is that staff is satisfied and comfortable with the numbers.

Commissioner Narum clarified that she is not proposing that the number be reduced to exactly the required 2,080 units.

Mr. Dolan reiterated that staff is comfortable with this margin; however, the Planning Commission or the City Council may wish to reduce that number, and staff does not know how close it should be.

Commissioner Blank stated that he has no basis for judging, whether it should be over 200 or by seven percent or ten percent.

Chair Narum agreed with the comments but stated that she felt rezoning in excess of ten percent of what is needed is a lot. She indicated that she is reacting as a member of the Task Force and the Planning Commission that the City rezone only what is needed.

Commissioner Blank stated that at the Joint Workshop, the discussion was to do more, but not an excessive amount more.

Commissioner O'Connor commented that this could be done by eliminating a site or adjusting the densities.

Chair Narum suggested eliminating the Sheraton site, although it is by the BART station, or the half of the CM Capital site that is currently occupied, or the Kaiser site.

Commissioner O'Connor suggested that only one site be eliminated as adding more would come too close to the required number and would not provide any flexibility.

Chair Narum suggested that another option would be to reduce the housing on the Auf der Maur/Rickenbach property by one-half to one acre and increase the retail acreage by that amount.

**Commissioner Blank moved to recommend approval to the City Council of the Supplemental Environmental Impact Report documents as shown in Exhibit A of the staff report; the Draft Housing Element as shown in Exhibit B and as amended by Exhibits G, H, and I of the staff report; and the land use changes (General Plan Amendments, Specific Plan Amendments, and Rezoning, as appropriate) as shown in Exhibit J and Exhibits K.1. through K-4, K-6 through K-9, and K-11 of the staff report; and to recommend strongly that the preparation of the East Pleasanton Specific Plan, starting in the first quarter of 2012, be completed by the second quarter of 2013.**

**Commissioner Pentin seconded the motion.**

Commissioner Pearce stated that she was also a member of the Task Force and appreciated Chair Narum's comments. She noted, however, that she was having a difficult time, which would not be the case if staff recommended that the number be reduced. She indicated that she is inclined to support the motion.

Commissioner Pentin stated that at the Joint Workshop, the total number of sites to be rezoned was reduced to 72 acres. He indicated that he thinks the City has what it needed and was comfortable with an additional 238 units, which is approximately 10 percent of the total number. He added that if there were two or more other good sites, he would be in favor of adding them back as the vacant lots would fit better and be more attractive if built on sooner.

Commissioner Olson agreed. He stated that his is not a minimalist view, and he believes 2014 will come quickly enough for additional sites. He indicated that he came into the Joint Workshop in favor of rezoning Site 11, the Kiewit property. He noted that he is still in favor of doing so and thinks the City will probably end up using the site. He stated that he will support motion and is not in favor of tweaking the numbers at this point.

Commissioner O'Connor stated that like Chair Narum, he was comfortable with reducing the number of units on the Auf der Maur/Rickenbach property if needed and is in favor of more retail on the property. He added, however, that he would like to leave all the sites in as recommended by staff.

Mr. Dolan clarified that while the exhibits cover all the sites, the motion refers only to the sites on the list.

Ms. Stern advised that the motion should include the changes to the SEIR listed in the staff memo.

Chair Narum inquired whether, if all the sites recommended are rezoned, the units that are over the number needed would count for 2014.

Mr. Dolan replied that the units will be counted if they have not been built by then.

Chair Narum indicated that she will not support the motion because she believed the Commission should recommend the minimum amount of acreage needed to meet the City's housing need.

**ROLL CALL VOTE:**

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

Resolutions Nos. PC-2011-47 recommending approval to the City Council of the Supplemental EIR documents; PC-2011-48 recommending approval of the Draft Housing Element; PC-2011-49 recommending approval of the General Plan Amendments; PC-2011-50 recommending approval of the Specific Plan Amendment, and PC-2011-51 recommending approval of the land use changes (General Plan Amendments, Specific Plan Amendments, and Rezoning, as appropriate) were entered and adopted as motioned.

Chair Narum clarified that she supports the Commission recommendation that the preparation of the East Pleasanton Specific Plan, starting in the first quarter of 2012, be completed by the second quarter of 2013.

- c. **P11-0664, Carl Pretzel (Appellant); Todd Deike (Applicant)**  
**Appeal of the Zoning Administrator's approval of an Administrative Design Review application to retain the existing fencing along the rear and side yards, measuring up to seven feet, one inch tall, at the existing residence located at 3642 Carlsbad Court. Zoning for the property is R-1-6,500 (One- Family Residential) District.**

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

Chair Narum inquired if the Deike and Pretzel lots are flat or if they drop down at some point.

Ms. Rondash replied that there is a one- to three-inch difference in height between the two lots and that at its highest point, the fence is seven feet, one inch tall.

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

Carl Pretzel, Appellant, distributed pictures of the fences. He stated that he himself built his fence and has maintained it for the past 20 years. He noted that the fence was in good condition and needed only minor repairs, until the past year when it collapsed. He indicated that when Mr. Deike replaced the fence, his [Pretzel's] fence panels were just thrown down on his [Pretzel's] grass. He added that Mr. Deike continued to work on the fence even after a "stop work" order was placed on the job.

Mr. Pretzel stated that back in September, he had unsolicited arguments with his neighbor regarding the fence. He indicated that he was not notified that the fence was to be over six feet tall and would not match the existing fence height. He added that staff informed him that mismatched fence heights happen a lot in Pleasanton as it is impossible for different neighbors to plan their fences according to one another's fence heights. He indicated, however, that he should not have to suffer the consequences of someone coming after 20 years and building a fence that mismatches the height of his already existing fence. He added that the fence is not painted and with time will bleach

out and will be unattractive. He stated that Pleasanton is a community of acceptance, and there is no community acceptance when two neighbors do not agree about a mismatched fence.

Mr. Pretzel stated that he supports staff's statement that a fence is required for pool safety; however, it need not be seven feet tall, as opposed to six feet. He indicated that this was a lack of judgment on the part of his neighbor, who is looking for reasons, whether logical or not, to support building a seven-foot tall fence. He added that if privacy is the issue, then Mr. Deike should put plantings on his side of the fence, but the height of the fence is not warranted.

Mr. Pretzel stated that there were also issues regarding paying for half of the cost of the fence because he did not want to pay \$700 for a fence he did not want. He added that he has constructed and maintained his own fence.

Mr. Pretzel stated that the staff report omitted issues regarding the concrete footings. He indicated that the portion of the fence constructed by the previous neighbor is good, unlike that constructed by Mr. Deike, which has mold and is rotten. He added that another neighbor, Ms. Fink, who is present and can talk for herself, also has issues with the fence.

Commissioner Blank asked Mr. Pretzel what he wanted to see happen with respect to the fence.

Mr. Pretzel replied that he wanted the fence "cut down" to six feet tall to match his existing six-foot tall fence.

Commissioner Blank asked Mr. Pretzel if he wanted two fences.

Mr. Pretzel said yes and added that he wanted to build his own fence.

Commissioner Olson requested clarification about the red fence shown in one of the slides presented and asked Mr. Pretzel if he owned that fence.

Mr. Pretzel replied that it is the common fence between Mr. Deike and himself.

Commissioner Pentin inquired if this fence was approved and if this was its condition since 1998.

Mr. Pretzel replied that the fence deteriorated after 1998 because it was not maintained.

Todd Deike, Applicant, apologized to the Commissioners for taking their time. He related the history of his interactions with Mr. Pretzel over the fencing issue and the timeline from when the fence began to fall down to when a new fence was required by Code Enforcement because of his pool. He noted that he received approval for a six-foot six-inch tall fence in 1998, and two months ago, he received approval for his

already existing seven-foot tall fence. He indicated that Mr. Pretzel co-applied for a 7.3-foot tall fence on his side property line and paid for half of its cost. He stated that he could not understand why he should cut down his 6.8-foot tall fence that is installed on his own property.

Commissioner Pentin asked Mr. Deike why the approved six-foot six-inch tall fence was not built in 1998.

Mr. Deike replied that he did not want to be responsible for the maintenance of the mow strip as conditioned by staff.

Commissioner Pentin inquired if the seven-foot tall fence was built without a permit.

Mr. Deike said yes, because it was required since he has a pool.

Commissioner Blank inquired whose fence was on the far left of the picture.

Mr. Deike replied that it is the fence between Mr. Pretzel's and Ms. Fink's properties.

Dottie Fink, neighbor, stated that she is the original owner of her property and has had no problem with the fence until Mr. Deike moved in and wanted to build a seven-foot tall fence. She indicated that in 1998, the fence was approved for a little over six feet but not for seven feet. She added that when three panels of the side yard fence between Mr. Deike's and her property fell, they remained without a fence for a long time even though Mr. Deike had a pool. She stated that Mr. Deike eventually put up a fence, and she agreed to pay for half of the cost of the fence.

Ms. Fink stated that she has a six-foot tall backyard fence, 16 linear feet of which she shares with Mr. Pretzel. She indicated that she does not want anything done to that portion of her fence and that Mr. Pretzel should have the same fencing height across his back yard. She noted that she was surprised that the Zoning Administrator approved a seven-foot tall fence for Mr. Deike. She added that privacy is not an issue as all the houses in the area are two stories and one can look outside a second-story window into the neighbors' property. She further added that one cannot look over a six-foot tall fence and, therefore, a seven-foot tall fence does not make a difference.

Referring to a picture of the neighborhood fencing, Commissioner Blank asked Ms. Fink if the fence is six-foot tall on her side and if the fence to the left perpendicular to her fence is seven feet.

Ms. Fink answered yes to both questions.

Robert Baker, neighbor, distributed a photo similar to what had been provided the Commission. He stated that he is the owner-operator of Amador Pool Service and performs pool inspections and repairs. He provided a copy of a report of an inspection he did for a Pleasanton residence and referred to a highlighted paragraph on page 2 of

the report referring to the required fences as well as secured gates with latches surrounding swimming pools. He indicated that Mr. Deike's prior fencing would not have passed his inspection and that his existing fence provides a secure barrier for his pool. He added that he is sensitive to safety and emphasized that children have lost their lives due to pools without fencing.

Mr. Baker stated that Mr. Pretzel's repair of the fence using old materials is not acceptable and would not pass inspection where a pool is involved. He noted that modifying Mr. Deike's fence would make it insecure with respect to the pool. He added that this would not affect Ms. Fink as she has no pool.

Referring to one of the pictures displayed, Commissioner Pentin requested confirmation that the fence started to deteriorate in 1998 and inquired how many years it has been in this state of disrepair.

Mr. Baker replied that the fence was in this present state for two or three years. He noted that he could see the rear neighbor one property down from his house.

Commissioner Pentin expressed concern about this condition and asked Mr. Baker if he thought it was reasonable to have no fence.

Mr. Baker said no.

Mr. Pretzel stated that the Code does not require a seven-foot tall fence for swimming pools and that a six-foot tall fence is applicable. He noted that Ms. Fink's back yard fence is by Mr. Deike's pool, and there was a period of time when Mr. Deike had no fence or latches around his pool. He added that it was only until this time last year that the fence became illegal and was cited as such by Code Enforcement. He indicated that his red fence meets the Code.

Commissioner Olson inquired if the photo submitted by Mr. Baker was current.

Mr. Pretzel said yes. He added that the picture was taken from his property and that the fence had basically been coming down since a winter storm in January.

Commissioner Olson asked Mr. Pretzel if he owns the fence.

Mr. Pretzel replied that it is a common fence.

Commissioner Blank noted that it is the same picture as that submitted by staff but taken from a different angle.

## **THE PUBLIC HEARING WAS CLOSED**

Commissioner Blank requested staff to present a history of actions and approvals for this fence.

Ms. Rondash replied that Mr. Deike applied and was approved for a six-foot, six-inch tall fence between his property and that of Mr. Pretzel in 1998, with a condition that the mow strip located on Mr. Pretzel's property be maintained. She noted that Mr. Deike did not build the fence because he was not agreeable to the maintenance of the mow strip. She indicated that in January 2011, the fence was beyond repair and needed to be replaced.

Commissioner Blank inquired if any approvals were granted between 1998 and 2011.

Ms. Rondash replied that there were none. She added that all five fences on the property were built without permits.

Commissioner Blank stated that he is normally insensitive to concerns of applicants who build without City approval; however, building a fence six inches taller than the approved six-foot, six-inch fence is not much of a difference to require that six inches be shaved off the top of the fence to make it the same height as the adjacent fences. He noted that a variety of fencing styles in a neighborhood is not unusual, and this fence is well-built, the design looks nice, and it meets all the codes. He indicated that he is inclined to say this is a challenge, but he will support staff's recommendation to deny the appeal and allow the fence.

Commissioner Pearce prefaced her comments by stating that neighborhood issues are the most challenging to deal with because it is an emotional issue and is difficult for all concerned. She indicated that she lives in an older neighborhood, and every section of her fence is a little bit different from one another. She stated that she will try to judge this application based on the Municipal code, if it is aesthetically appropriate and safe. She added that she feels for everyone involved but agrees with Commissioner Blank that there is not enough material to require the applicant to tear the fence down.

Commissioner Olson stated that he has been through this process twice when he and his neighbor decided to build a seven-foot tall fence between their properties and did not realize that it required a permit. He added that the second time, it was a six-foot tall fence right down the property line he shared with another neighbor, and each of them paid for half of the cost and agreed to finish their sides of the fence the way they chose. He noted that the new fence is a great improvement over Mr. Pretzel's fence as shown on the picture, and it is beyond him how the fence could be left that way for a long time. He stated that he would support denying the appeal.

Commissioner Pentin concurred with the statements of the previous Commissioners.

Commission O'Connor stated that he was not quite sure why the old fence looks shorter than the extension which is supposedly six feet tall. He noted that if this section is to remain, there would be a one-foot step up with the seven-foot tall fence, which would not be a big deal and could be remedied with landscaping. He added that the new fence looks well-built.

Chair Narum agreed. She stated that she has two to three fences across her backyard that all look different, but she and her neighbors agreed with one another, paid their share of the installation, and mutually maintain the fence.

**Commissioner Blank moved to deny the appeal, thereby upholding the Zoning Administrator's approval of Case P11-0664, subject to the conditions of approval listed in Exhibit A of the staff report.**

**Commissioner Pentin seconded the motion.**

**ROLL CALL VOTE:**

**AYES: Commissioners Blank, Olson, Narum, Pearce, and Pentin**

**NOES: None**

**ABSTAIN: None**

**RECUSED: None**

**ABSENT: None**

Resolution No. PC-2011-50 approving Case P11-0664 was entered and approved as motioned.

- d. P11-0731, Carl Pretzel (Appellant); Robert Baker (Applicant)  
Appeal of the Zoning Administrator's approval of an Administrative Design Review application to construct an approximately 74-foot long fence between 3647 and 3633 Glacier Court North, varying in height from 72 inches to 83 inches. Zoning for the property is R-1-6,500 (One- Family Residential) District.**

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

Chair Narum disclosed that she visited Mr. Baker's property. She then inquired if there were any conditions of approval.

Ms. Soo replied that the conditions are listed in the Zoning Administrator's approval letter, Exhibit A of the staff report.

Chair Narum noted that there is a difference in elevation between Mr. Baker's and Mr. Pretzel's yards. She inquired how the fence height is measured.

Ms. Soo replied that the fence is seven feet, ten inches tall on Mr. Pretzel's side and that the fence is lower on Mr. Baker's side.

Commissioner O'Connor noted that the application for the fence was filed after the fence had already been built. He inquired who filed a complaint on the overheight fence.

Ms. Soo explained that Mr. Deike had requested a hearing for the fence to ensure that both Mr. Baker and Mr. Pretzel apply for and receive a permit for their fence, just as he [Mr. Deike] was required to do after Mr. Pretzel requested a hearing for his [Mr. Deike's] fence which was also constructed without a permit.

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

Carl Pretzel, Appellant, submitted several pictures of the fences along the property lines of the three lots belonging to Mr. Pretzel, Mr. Baker, and Ms. Fink. He noted that the grade on Mr. Baker's side of the fence is higher than that on Ms. Fink's because Mr. Baker utilized railroad ties and piled dirt on his side but without putting a 2"x4" piece of wood to protect the fence from rotting and to prevent the soil from seeping through to his property. He questioned Mr. Baker's claim that he built a tall fence for privacy because his backyard and pool are clearly visible from the second-story window of the neighboring homes. He added that that the fence also has gaps that allows people to look through to Mr. Baker's property.

Mr. Pretzel stated that the condition for mitigation measures is very vague. He noted that the bushes Mr. Baker planted are now dead and have not been replaced. He added that unless City staff is more specific about this condition, Mr. Baker will install small plants that will be allowed to die. He noted that when Ms. Soo came out to inspect the fence, she indicated that 15-gallon size trees would grow to the height of the fence. He indicated that these trees should be planted or the fence cut down so Ms. Fink does not have to deal with the visual impact of the overheight fence.

Mr. Pretzel stated that he felt he was swindled by Mr. Baker, who made a promise and did not come through, and disregarded his property when he broke and did not replace the fence post to which Mr. Pretzel's front yard fence was hinged. He indicated that he spent \$330 to put boards on his side of the fence to block dirt from oozing through to his side.

Commissioner Blank asked Mr. Pretzel what his preference was with respect to the fence.

Mr. Pretzel replied that he would like the fence cut down to six feet high. He indicated that there was no discussion between Mr. Baker and him regarding the height of the fence before it was built. He stated that he assumed it would be six feet tall and was surprised to see how high it was.

Commissioner Pentin asked Mr. Pretzel why it did not dawn on him to discuss the fence height with Mr. Baker, particularly since he had a previous issue regarding with Mr. Deike regarding fence height.

Mr. Pretzel replied that he expected the fence to be six feet high.

Robert Baker, Applicant, stated that he was in full agreement with the staff report with a minor correction that the fence between Ms. Fink's and his rear yard is six feet tall and not five feet. He noted that he and Ms. Fink agreed that rather than planting a tree where his new fence intersects with their common rear yard fence, he would plant shrubbery that would grow tall enough to shield the fence from Ms. Fink's view. He noted that a tree would not be practical that close to his swimming pool.

Mr. Baker indicated that he and Mr. Pretzel talked from start to finish of the fence installation project, from the removal of the old fence, consultation and agreement on the new fence configuration including dimensions, and final approval and permit co-application. He stated that Mr. Pretzel wanted to attach the old boards but he did not want the red fence. He added that he also installed 2" x 12" baseboards to support his side of the fence.

Mr. Baker stated that Mr. Pretzel observed the construction of the fence from start to finish; he reimbursed Mr. Baker for half the cost of the materials but did not provide labor or labor reimbursement. He added that although they did not discuss the height of the fence, at no time during the project did Mr. Pretzel come to him to object to the fence height. He stated that he thought Mr. Pretzel was pleased with the fence when he signed the application; however, he withdrew his co-application about a month later when Mr. Deike received approval for his fence, which Mr. Baker supported because of the swimming pool. He denied Mr. Pretzel's claim that a "Stop Work" order was issued on the job, indicating that he was never served any such order from the City.

Mr. Baker stated that Mr. Pretzel's recent work on the base of the fence structure, removing concrete and drilling into the concrete post bases which can cause them to crack has put the strength of the fence in question. He asked that Mr. Pretzel consult with him in advance and receive his approval prior to doing any additional work or modifications to the fence and its supporting structure. He also asked that all such work be performed by a licensed contractor rather than by Mr. Pretzel himself.

Mr. Baker stated that Mr. Pretzel's ownership rights to the fence are not equal to his because while Mr. Pretzel paid for half of the cost of the materials, he did not pay for any of the labor costs. He noted that Mr. Pretzel claimed he has every right to cut down the fence, and should he do so, Mr. Baker stated that he would call the police and charge Mr. Pretzel with destruction of private property.

Mr. Baker requested the Commission to deny Mr. Pretzel's appeal.

Ms. Fink, neighbor, stated that the rear fence she shares with Mr. Baker had been in disarray for years and was propped on her side of the fence. She noted that the 40-year-old fence was blown down for months, and this did not affect Mr. Baker's pool. She added that Mr. Baker stated he would build the fence, but after four months with nothing happening, she decided to build the existing six-foot tall fence with the help of her son but without the help of Mr. Baker.

Ms. Fink stated that she had no idea that Mr. Baker was going to build the seven-foot tall fence perpendicular to their common rear yard fence. She presented a picture taken from her kitchen window, which is about 40 feet from the fence, and stated that the fence is visually disgusting. With respect to Mr. Baker's statement that they agreed to plant shrubbery to shield the fence, Ms. Fink stated that Mr. Deike wanted her to plant a tree on her side of the fence, but she pointed out that she already has a tree and a big bush in her back yard and cannot put a third one in between. She added that a bush planted on Mr. Baker's side of the fence will not cover the fence and requested that the fence be cut down to six feet tall.

Mr. Deike stated that he would never again build without a permit. He indicated that he received a complaint from Code Enforcement about his overheight fence, so he reported the overheight fence behind Mr. Baker's and Mr. Pretzel's properties. He added that Mr. Pretzel removed his name from Mr. Baker's fence application because he [Mr. Deike] received approval for his overheight fence.

Mr. Pretzel stated that whether a tree or a bush is planted, it has to be one that is tall enough now to cover the fence. With respect to the Mr. Baker's statement that he did not provide any labor, Mr. Pretzel stated that Mr. Baker threw his old fence boards on his side of the fence, disposing of which would be part of the demolition process. He added that Mr. Baker actually mounted 4" x 6" wood which required him to cut back his planter box to accommodate them. He pointed out that Mr. Baker's claim that he provided all the labor actually created more work for Mr. Pretzel. He questioned why Mr. Baker's would require Mr. Pretzel use a licensed contractor for any modifications to the fence when Mr. Baker built the fence on his own without using a licensed contractor. He reiterated his earlier comment that the tree or bush to cover the fence from view be planted now.

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

Commissioner Blank noted that the original application, with drawings, which both Mr. Baker and Mr. Pretzel signed as co-applicants, was not included in the packet and inquired if staff had a copy handy.

Ms. Soo displayed the documents on the overhead screen.

Commissioner Blank commented that it appears to him that at one point in time, both Mr. Baker and Mr. Pretzel signed an application indicating the height of the fence.

Commissioner O'Connor noted that surrounding property owners are normally notified of applications such as this. He inquired if Ms. Fink was notified.

Ms. Soo confirmed that she was.

Commissioner O'Connor inquired if Ms. Fink attended the Zoning Administrator hearing.

Ms. Soo replied that she did.

Commissioner Blank inquired if the Zoning Administrator findings included one on landscaping.

Ms. Soo said yes and referred to Condition No. 2 of the Zoning Administrator's approval letter, Exhibit A of the staff report.

Commissioner Blank commented that "neighbor versus neighbor" is never a "win-win" situation. He stated that he is inclined to deny the appeal as both the applicant and the appellant signed the original application which indicates the height of the fence.

Commissioner Olson agreed and indicated that he has nothing more to add to that.

Commissioners Pentin and Pearce likewise agreed.

Chair Narum inquired what the size of the plant should be.

Commissioner Blank noted that Condition No. 2 requires the Director of Community Development's review and approval of the plant location, species, size, and quantity. He recommended that the mitigation be done as quickly as possible.

**Commissioner Blank moved to deny the appeal, thereby upholding the Zoning Administrator's approval of Case P11-0731, subject to the conditions of approval as listed in Exhibit A of the staff report.  
Commissioner Olson seconded the motion.**

**ROLL CALL VOTE:**

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

Resolution No. PC-2011-51 approving Case P11-0731 was entered and approved as motioned.

**7. MATTERS INITIATED BY COMMISSION MEMBERS**

Commissioner Blank noted that Item 6.a., PUD-85-08-02D-03M, Mercedes Benz appeared pretty straightforward and the staff report was very clean. He inquired why it was not considered under the Consent Calendar.

Mr. Dolan replied that he believed the Commission might have wanted to have some input for the construction of a large commercial building that would be fairly visible from the freeway.

Commissioner Olson noted that there is a similar Mercedes Benz dealership building in Wilsonville, Oregon, along I-5 that meets corporate standards and looks great from the freeway with a couple of vehicles displayed on a second-story platform.

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

- a. Future Planning Calendar**
- b. Actions of the City Council**
- c. Actions of the Zoning Administrator**
- d. Selection of Planning Commission Chair and Vice Chair for 2012**

**Commissioner Blank moved to nominate Commissioner Pentin as Chair for 2012. Commissioner Pearce seconded the motion.**

### **ROLL CALL VOTE:**

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

**Commissioner Pearce moved to nominate Commissioner Blank as Vice Chair for 2012. Commissioner Pentin seconded the motion.**

### **ROLL CALL VOTE:**

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

Commissioner Pentin was named Chair and Commissioner Blank was named Vice Chair for 2012.

**e. Adoption of Planning Commission Schedule of Meeting Dates for 2012**

The Commission unanimously adopted the Planning Commission schedule of meeting dates for 2012.

Commissioner Blank thanked Chair Narum for an excellent job as Chair in 2011.

The other Commissioners agreed.

Chair Narum thanked staff all their work behind the scenes during a tough year with the Housing Element and other big projects.

**9. COMMUNICATIONS**

**10. REFERRALS**

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

**12. ADJOURNMENT**

Chair Narum adjourned the Planning Commission meeting at 9:58 p.m.

Respectfully,

JANICE STERN  
Secretary