



PLANNING COMMISSION MINUTES

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

APPROVED

Thursday, November 18, 2009

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

1. CALL TO ORDER, PLEDGE OF ALLEGIANCE, AND ROLL CALL

The Planning Commission Special Meeting of November 18, 2009, was called to order at 7:00 p.m. by Chair Pearce.

Staff Members Present: Brian Dolan, Director of Community Development; Julie Harryman, Assistant City Attorney; Marion Pavan, Associate Planner; and Maria Hoey, Recording Secretary

Commissioners Present: Chair Jennifer Pearce, Commissioners Phil Blank, Kathy Narum, Greg O'Connor and Jerry Pentin (arrived at 9:40 p.m.)

Commissioners Absent: Commissioner Arne Olson

2. APPROVAL OF MINUTES

a. **October 14, 2009**

b. **October 28, 2009**

Commissioner Blank suggested the minutes be deferred to the next meeting due to Commissioner Olson's absence. Chair Pearce noted Commissioner Pentin was also not present yet and she suggested deferring approval of the minutes to the end of the meeting.

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 public comments.

4. **REVISIONS AND OMISSIONS TO THE AGENDA** – There were no revisions or omissions to the agenda.

5. **CONSENT CALENDAR**

a. **PPOL-1, City of Pleasanton**

Review and consideration of a Planning Policy regarding the definition and licensing of child care uses.

Continued to a future Planning Commission meeting.

6. **PUBLIC HEARINGS AND OTHER MATTERS**

a. **PCUP-257, Mari Kennard, Redcoats British Pub and Restaurant**

Application to modify the approved Conditional Use Permit (PCUP-129) for the operation of Redcoats British Pub and Restaurant to expand the days/hours for indoor music. Zoning for the property is Central Commercial (C-C), Downtown Revitalization, Core Area Overlay District.

Mr. Dolan advised that Mr. Pavan would present the project in the absence of Donna Decker, Principal Planner, who is ill, and Steve Otto, project planner, who is on vacation.

Mr. Pavan presented the staff report and discussed the background, layout, and key elements of the application.

Commissioner Blank requested further explanation of the application's smoking area, which was described by Mr. Pavan.

Commissioner Blank stated that for a previous similar application, the Barone's Restaurant, the Planning Commission had requested that some type of noise monitoring be put in place. He noted that the current application did not require a specific noise monitoring and inquired if this was intentional.

Mr. Dolan replied that concerns were not received about how loud the music was but about patrons loitering in the front of the restaurant and smoking. He added that violation of the noise ordinance exceeding the allowed decibels was not presented as an issue.

Commissioner Narum inquired if staff had checked with the Police Department on any record of noise or loitering complaints.

Mr. Pavan replied that he checked with the Code Enforcement Officers and verified that no complaints had been received since the start of operation.

Mr. Dolan added that there had been occasional police activity. He noted that the Police Department had indicated they were forwarding documentation to staff; however, he stated that he had not received the information and that it is possible they were routed to Ms. Decker.

Commissioner Narum noted that the original permit was issued before she became a Commissioner and inquired what the reason is behind having the outside dining in the front of the building closing at 9:45 p.m. but 11:00 p.m. on the eastern side.

Mr. Pavan replied that it was most likely due to the fact that the eastern side area is enclosed and on private property and is not part of the sidewalk area.

Commissioner Blank stated that he was in the Commission then and recalled that was the case. He added that there was significant discussion about the appropriateness of the dining area, control of access, and noise.

Commissioner O'Connor stated that it was his understanding that there have been some complaints since the restaurant opened. He inquired if any complaints made, such as through telephone calls to staff, would have been turned over to Code Enforcement for handling.

Mr. Dolan replied that Planning staff generally handles complaints received and refer them to Code Enforcement only when a formal case needs to be opened. He stated that during his first six to eight months as Director, a series of specific complaints were received about the First Wednesday celebration. He noted, however, that it has been very quiet over the last year, including during the summer, when more outside activity would be expected that would potentially be easier to hear and would more easily bother the neighborhood.

Chair Pearce inquired where the smoking bench was located.

Mr. Pavan pointed the location on the slide.

Chair Pearce further inquired if it was the intent that patrons would exit doors and walk around the building on the west side to smoke.

Mr. Pavan confirmed that was the case.

Chair Pearce inquired if it was Ms. Decker who had contacted the Police Department to obtain complaint logs.

Mr. Dolan replied that the Police Department had called him and said that someone from Planning had requested the materials but that he did not know who it was.

Chair Pearce requested confirmation that when there were issues over a year ago, staff had met with the Police Department and discussed how complaints could be addressed.

Mr. Dolan confirmed that was the case. He added that the applicant, Ms. Kennard, agreed to redouble her efforts in complying with the conditions of approval. He indicated that to his knowledge, it has been quiet and no issues have been raised to trigger the Police Department's involvement.

Commissioner Blank inquired if Planning staff would not necessarily know if someone were to contact the Police Department.

Mr. Dolan replied that there would not be a call unless there was an incident and that staff would not necessarily know about it; however, based on the past history, it would be likely that staff would know or find out about it.

Commissioner Blank inquired if it would be accurate to say that a police report does not necessarily engender a Code Enforcement action and vice versa, and that in order to be thorough, both Code Enforcement and police records would need to be tracked or identified.

Mr. Dolan said yes.

Commissioner O'Connor inquired if smoking bench on the west side of the building was part of the original conditions of approval and whether the condition specified exactly where the bench would be located.

Mr. Dolan replied that while the bench was part of the conditions, its location was not specified; however, staff had signed off on the location.

Commissioner O'Connor stated that he was at the property and walked it, and noted that there appears to be a doorway across the alley to another establishment which could be within a 20-foot radius. He inquired why the bench would be located so far down if the City expected patrons from this establishment to use the bench. He indicated that he thought it should be located closer to St. Mary's Street, approximately half-way between its present location and the sidewalk.

Mr. Dolan replied that it was his experience that when patrons exit bars or restaurants to smoke, they do so quickly and then head back in. He added that the bench defines the smoking area, although smokers typically stand around to smoke and do not generally sit.

Commissioner O'Connor agreed that the bench and the missing ashtray would better define the area.

THE PUBLIC HEARING WAS OPENED.

Mari Kennard, applicant, stated that Redcoats is primarily a full-service dining establishment that serves patrons of all ages, including children, and is a place where

the community can assemble for all kinds of events. She added that they are connected with the community and take pride in working with other merchants during regular street activities and at night. She noted that they support charitable groups, youth clubs, and soccer teams in Pleasanton, and run events regularly with the St. Andrew's Society and Valley Community Society.

Ms. Kennard explained that a pub in the British tradition is not like a bar, but more like a hub of a community place, and this is how she wants to be seen. She noted that in her original application six years ago, her intention was to have evening hours to provide music and dancing, initially on Fridays and Saturdays. She indicated that the building owner had invested in improving what was a beautiful, old building but in extremely poor repair, and she had invested in the interior of the building. She stated that she applied to serve breakfast in an effort to help gain back her investment but that she ceased that operation because it was not profitable. She explained that this is what led her to request to have the same hours of operation and to provide music on Wednesday and Thursday evenings.

Ms. Kennard stated with the economy being currently dire, all the Downtown merchants are in survival mode and are doing what needs to be done to remain open until things turn around. She noted that dining is slow because people can cook at home; however, they are looking for places to assemble for entertainment such as Barone's, where they can enjoy music and go dancing. She indicated that extending her operations on Wednesday and Thursday nights would allow her to expand her offerings to a younger crowd in the same way that the 30- to 45-year-old age group patronizes her establishment on Friday and Saturday nights.

Ms. Kennard stated that she currently has 21 employees, mostly Pleasanton residents, down from the 50 people she originally employed. She requested the Commission to approve her application, which would allow her to fill the need, bring in sales tax revenue, and provide jobs to local residents.

Commissioner Narum noted that Condition No. 4 of the original conditions indicates that the applicant shall maintain the area surrounding the restaurant, outdoor dining areas, etc. in a clean and orderly manner and that the applicant shall regularly monitor the area outside of the restaurant/bar to ensure peace and quiet. She asked Ms. Kennard if she had a plan and whether individuals were assigned to implement this condition.

Ms. Kennard replied that the first job of her morning crew, specifically the dishwasher, is to survey the outside of the building, pick up litter, and sweep and tidy the area. She indicated that out of concern for the Finches' property, her employees have gone up that far to pick up litter, which is a rare occurrence. She added that when she gets to work, she also walks the area to ensure this is being done, noting that she occasionally finds in the alleyway next to her restaurant or in the rear parking lot by the Finches, litter that did not come from her establishment or a beer bottle or can that she does not sell. She noted that at the end of every evening and at night after an event, her security staff also look around and perform a pick-up.

Commissioner Narum inquired how noise is monitored on Friday and Saturday nights to ensure they were within the noise levels allowed by the Municipal Code.

Ms. Kennard replied that she does not have a decibel monitor. She indicated that she would sometimes step out and stand a distance from the building to see what she can hear. She added that her DJ's have worked with them for awhile and control the noise level because they know it cannot be excessive.

Commissioner O'Connor asked Ms. Kennard what time in the morning the dishwasher and she check the outside of the restaurant.

Ms. Kennard replied that they check the outside at 10:00 a.m. She noted that her morning crew used to start at 9:00 a.m. but that she had to cut them back an hour because of the economy. She added that they also check the surroundings on nights that they have music.

Commissioner Blank disclosed that he had a conversation with Mr. Finch who invited him to his property but did not meet with him and that no conversation took place regarding the issue.

Commissioner Narum disclosed she also spoke with Mr. Finch but did not visit his place.

Commissioner O'Connor disclosed that he spoke with Mr. Finch and visited his residence.

Gene Finch, a neighbor, stated that he is a former Planning Commissioner and is familiar with the process. He noted that is supportive of businesses in the Downtown and that he was aware of what Redcoats wanted to be when it first opened. He added that he supported the restaurant when an application was made to serve breakfast. He indicated that he is supportive of the present application but with mitigations.

Mr. Finch stated that he did not want to hurt anyone's feelings; however, excessive noise has been going on for over a year and a half, starting when a temporary use permit was approved during the summer for bands in the service area. He indicated that the band vibrates his building and that he has had to keep his window shut at all times, noting that his only source of air is his six operable skylights. He expressed concern that restaurant patrons were smoking outside his window and that his planter boxes are always full of cigarette butts and ashes. He added that his wife checks their front yard between 5:30 a.m. and 6:30 a.m. and picks up bottles and glasses from the restaurant. He stated that he felt the bench was located too far down and suggested moving it back to an area of 6 feet by 20 feet and post signs that state it is a designated smoking area. He requested that a good neighbor policy be instituted and to not allow music to help mitigate noise.

Commissioner Pentin arrived at this point of the meeting.

Dr. Howard Long, neighbor, indicated that he is generally happy to see the restaurant thrive but cited public nuisances, including smoking, which he believes the City can help mitigate. He stated that he believes the problem is the bass level from the music and the direction the music faces. To check the public nuisances, he suggested that the chains be removed, a sign installed that identifies the smoking area, and bricks and protection from the weather be installed in the area to allow Redcoats to improve its business by helping to concentrate smoking.

Vicki Salinas, friend of the applicant, stated that she has seen Mari Kennard through two restaurant openings and is a supporter of the restaurant. She indicated that she believes no one can address smokers because it is difficult to control what smokers do unless they are physically hand-held. She acknowledged the Finches' concerns but noted that Ms. Kennard keeps her building's doors closed as opposed to other adjacent businesses that do otherwise. She noted that Ms. Kennard personally cleans up the area and expressed her support for allowing music two more nights a week. She felt the good neighbor policy works well for a residential neighborhood and asked property owners to be more tolerant, given that they live in the Downtown area next to three thriving restaurants. She stated that wanted to see all Downtown businesses thrive and urged the Commission to approve the application.

Deborah Kostal stated that a business that follows all guidelines should have the ability to operate within those guidelines, and provide jobs for people, money for the City, and a place for many to congregate. She indicated that she felt it was atrocious for one person who knowingly chose to move next door to a pub to have the potential to cripple the business because of music being played. She provided examples that those moving next to an airport or an elementary school should realize there would be some noise in the neighborhood. She pointed out that it would not make any sense for a business to even consider opening in Pleasanton if this is how businesses would be treated.

Joel Cacia stated that he grew up on the north side of town and moved to Downtown Pleasanton in 1991 because of its liveliness with events such as concerts in the park, Wednesday night street parties, and live music in area restaurants, which add value to the quality of life in the area. He added that events such as these give residents motivation to get out of the house and away from the television and to socialize. He noted that too often, the complaints of a few are given more consideration than the silent approval of many. He expressed his support for Redcoats to provide music on Wednesday and Thursday nights.

Michael O'Callaghan stated that he supported approval of the project. He indicated that he has known Ms. Kennard for years and agrees that anyone who moves into the Downtown should expect activity. He noted that Ms. Kennard agreed with the mitigation of a few things and that Mr. Finch supported the project with the exception of the problems with the smoking and cigarette butts.

Mr. O'Callaghan indicated that he is a builder and works with acoustical engineers at times. He noted that the wall across the patio is, in fact, a sound wall and that the noise coming out of the doors, when open, will stop at that wall and bounce backwards rather than travel up, over, and around. He stated that he believed turning down the bass may help and added that he is a proponent of having a set of base rules for the Downtown and a right-to-do-business ordinance, and supported more music nights.

Melanie Sadek, owner of Murphy's Paw, stated that the outdoor seating area during the summer has nothing to do with the permit Ms. Kennard has, but rather, with those permits secured through the Pleasanton Downtown Association (PDA) for a temporary use permit for the summer for non-electrified but mildly amplified music until 9:00 p.m. She noted that this allowed establishments to provide outdoor entertainment while Redcoats is permitted only DJ's indoors. She indicated that that when she gets into her business in the morning, she finds cigarette butts in front of her store and sweeps them up.

Ms. Sadek stated that she is on the PDA Board of Directors and works a lot with merchants. She indicated that it is difficult to get some of the restaurant owners to work on various promotions but that Ms. Kennard is very active and cooperative. She added that Ms. Kennard is conscientious with her permit and that she hears good things from Redcoats customers. She urged approval of the permit that would allow the restaurant to bring in a younger crowd.

Fran Pagliocca stated that many core issues have been pointed out and at times, people can be over-vigilant when listening to the issues and that a balance needed to be struck. She noted that continuing to maintain the City's vendors and resources is important and expressed support for the application.

Kenny Freeberg, Let's Bounce, stated that he and his business partner have a security company and provide security for Redcoats. He added that Ms. Kennard is diligent in having them police issues and that his crew of four people walk with flashlights, look for litter, and maintain the peace and quiet for neighbors. He indicated that he has asked people not to stand with the side door open so noise does not go outside. He also noted the dress code required of those who patron the establishment.

Mr. Freeberg indicated that Ms. Kennard has discussed with them working on Wednesdays and Thursdays if the permit is approved and noted that of the eight bars they service, Ms. Kennard's is by far the most proactive in not disturbing the neighborhood and keeping up their property. He stated that Ms. Kennard is attempting to have a place where patrons will feel like they are in their hometown bar. He acknowledged noise concerns and stated that sometimes customers from Fernando's Restaurant walk down to Ms. Kennard's restaurant to smoke. He indicated that he would be happy to do whatever is necessary to help Ms. Kennard and take care of the requirements of the City, including increasing the patrol outside the building, cleaning up, and keeping the noise to a minimum in order that patrons have a good time and go

home safe. He stated that he believes once the plans for the corridor are completed, the situation will be better improved.

Commissioner Narum inquired how long Let's Bounce has been providing security for Redcoats.

Mr. Freeberg replied that they have been working for Ms. Kennard for approximately four to five months, after Ms. Kennard replaced her employee-based security.

Carlos Portillo, Let's Bounce, echoed Mr. Freeberg's comments regarding providing security for Ms. Kennard. With regard to loitering, he stated that they can only address patrons of Redcoats and not those of other businesses. He noted that they do what they can to keep people moving through the area and away from Mr. Finch's house. He indicated support of the permit and that they would be available for more hours as needed.

Bob Byrd noted that Redcoats is asking for music indoors as opposed to the Barone's outdoor music, thus requiring a sound monitor. He indicated that he felt the bench is located in the area for many reasons, noting that most of the alleyway is owned by the City. He stated that he and his brother drew the plan for the alleyway and that they submitted it to the City some years ago. He added that at that time, he offered to maintain the area for five years but understood from the City that it had no funding for the improvements.

Mr. Byrd stated that there is no opening in the wall to transfer sound anywhere and agreed that patrons went over there to smoke. He added that the Finches' bedroom window was put into the building as an access to the outside in case of emergency and that he had to provide an easement as they would fall onto his property. He stated that when music is played in the courtyard, the sound is not audible at the corner as the sound travels straight out towards St. Mary Street and toward Barone's.

Peter MacDonald stated that he is the Chair of the Downtown Vitality Committee but that he was speaking as a citizen of Pleasanton. He noted that Redcoats has become a wonderful asset to the Downtown and hoped that there will not be complicated regulations for indoor music. He stated that Pleasanton is competing with downtowns where businesses like Redcoats are being welcomed. He added that people want to go to places where they can listen to music and that many places in Livermore offer music in the evening. He stated that hours are not being restricted in other communities and it makes a major difference in downtowns. With respect to issues dealing with residential neighbors, he stated that he believes Ms. Kennard is bending over backwards to be a good neighbor. He acknowledged the difficulty for residents living in the Downtown near bars and restaurants but that this is part of moving into the Downtown neighborhood. He indicated that he believes the alleyway could be a nice paseo between the public parking lot and St. Mary Street. He supported staff's recommendation for the application.

Judy Wheeler, Town Centre Bookstore and President of the PDA, spoke of the Association's goal of a vibrant Downtown and stated that Redcoats is an important business. She indicated that people want to be entertained and that it would be great to keep Pleasanton dollars in Pleasanton. He supported approval of the application. Ann Kelly, 16-year resident of Pleasanton and Chaplain at St. Andrew's Society, stated that Ms. Kennard has been a very generous and responsible business owner and has allowed fundraisers at Redcoats. She spoke of a positive experience at Redcoats and related how Ms. Kennard maintains the restaurant's capacity, not allowing them to come into the restaurant when it has reached its full capacity. She stated that she could not comprehend why people would choose to move Downtown if noise bothers them, especially since the Downtown comes with a certain amount of disruption in life, including the train, noise, and traffic. She noted that her 24-year-old son goes to Redcoats and that she is happy with the security it provides, including taxi service so there is no excuse for dui. She agreed that some smokers can be irresponsible but noted that she has sat in the patio area and did not smell smoke.

Megan Murphy, bartender at Redcoats, stated that she is a Pleasanton resident and is TIPS certified. She noted that Pleasanton can be a boring and uneventful town and that Redcoats provides a good alternative to Popi Lounge and Sunshine Saloon. She indicated that she is very happy working at the pub and that the security company does a great job. She noted that Ms. Kennard takes pride in the building and that they have a lot of great events. She added that Ms. Kennard treats her employees with respect and does not tolerate harassment. She stated that Ms. Kennard closes the pub early during the week if people do not come in, and requested the Commission to approve the application.

Mark Davison stated that a nun once taught him that there is always one person who could wreck it for everyone else and asked the Commission not to allow this to happen to a fine establishment. He stated that Pleasanton is a beautiful city in the Bay Area and that he loves coming to Pleasanton. He asked the City to keep the town as it is with its vibrant establishments vibrant.

Mari Kennard thanked those who spoke on her behalf and thanked the Commission.

Commissioner Pentin noted that the security persons had indicated that if they were brought back for additional nights, they would be willing to increase patrols. He asked Ms. Kennard if she would put this in writing.

Ms. Kennard replied that this could be done and that she would agree to have them patrol every 15 minutes.

Commissioner Pentin voiced concern about how the smoking problem has grown over time, noting that it has grown from the first conditions of approval of odors to the smoking area and now to establishing the smoking area. He indicated that he felt it would be a good neighbor policy to work establishing the smoking area.

Ms. Kennard noted that smoking is a challenging issue. She stated that initially, the smoking bench was approved when they added the breakfast and that from that time, they rigorously sent smokers around to the bench. She added that it became a problem because people want to go and stand underneath the Finches' front room. She indicated that the security used previously was reticent about approaching people and that she would police smokers. She noted that for a short time, she allowed people to smoke in the patio late at night when there was no dinner service but that she is committed to returning to the original permit and have smoking enforced by security at the bench. She stated that customers will have to be directed and that signage may also help with this issue.

Commissioner Pentin stated that he had visited the building to look at the bench at night and noted that it is in the darkest part of the alley and had no lighting around it. He inquired if the area could be lit.

Ms. Kennard replied that this is the first time this issue has been raised.

THE PUBLIC HEARIN WAS CLOSED.

Commissioner Blank moved to make conditional use findings as listed in the staff report and to approve Case PCUP 257, subject to conditions listed in Exhibit A of the staff report.

There was no second to the motion, and the motion died.

Commissioner O'Connor stated that he heard a lot of positive testimony and only little negative testimony. He noted that there were also letters received from those who could not attend and that it appears to him that everything discussed from a negative viewpoint was already covered in the original conditions of approval: Condition No. 4 regarding maintaining the area surrounding the restaurant and bar in a clean and orderly manner; Condition No. 5 regarding litter, loitering, and vibrations, not the volume of music but the bass; Condition No. 13 regarding prohibiting taking alcohol outside the premises. He added that he has heard staff say that there have not been any formal complaints and that if they did, it could be addressed as a Code Enforcement issue.

Commissioner O'Connor stated that he could not modify the conditions to make it any better. He noted that adding two more nights of music midweek would not be a big change and that he agreed with staff's recommendation.

Commissioner Blank asked Commissioner O'Connor if he was in agreement with the Conditions of Approval.

Commissioner O'Connor replied that he was but that he wanted to have a discussion first.

Commissioner Narum stated that she likes Redcoats and wants it to be successful and that she loves what the Byrd brothers did to bring the building back up to what it looks like today. She noted that there is no condition that the applicant will provide security during the nights music is played and agreed with Commissioner O'Connor that it is already included in Exhibit A. She indicated that she believes that the area must generally be policed and that the owner understands the ramifications of not doing policing the area.

Commissioner Blank noted that the Commission has not required this of any other business owner but that he thinks it is in their best interest to have security. He indicated that he did not personally want security specified but questioned what would occur if Ms. Kennard decides to terminate the security firm and return to using her own employees. He indicated that he felt the conditions were very specific and encouraged the people to contact staff if there is a violation of the CUP, which Code Enforcement can then address. He added that if the violation gets out of hand, the permit can return to the Planning Commission for reconsideration.

Commissioner Narum suggested having for a six month review such as a written summary from staff as to whether there have been any complaints. She stated that she thinks there needs to be a balance between businesses and residents.

Commissioner Blank supported holding the review but voiced concern that people could purposely call police regularly if they know such a report is to be submitted at a specified period of time.

Mr. Dolan confirmed that the permit can be returned to the Planning Commission should a problem arise with compliance with the conditions. He expressed concern that the review would add to what Planning already does for all use permits.

Commissioner Narum indicated that she did not want to get into designing but suggested improvement to the smoking area, citing additional signage, lighting, and a second bench.

Mr. Dolan advised that the critical dimension is 20 feet. He added that everyone agrees that the improvement of the alley is a good idea and that it has been brought up in discussions on the CIP but was not ranked anywhere near top of the wish list.

Commissioner Blank inquired about the potential of moving the bench towards St. Mary Street.

Mr. Dolan said he has not personally witnessed the situation of smokers ignoring the bench and that there seems to be a mixed opinion as to whether this is successful or not. He added that exploring the addition of bricks around the area might improve the attractiveness, having the receptacle there helps, and said signage as suggested by Mr. Finch and agreed to by Ms. Kennard is relatively easy and most likely will be very effective.

Commissioner Pentin noted that the staff report states that the Finches were not opposed to having music on Wednesday and Thursday nights but asked that it be stopped at 10:00 p.m. He further noted that staff included an option for stopping it at 11:00 p.m. versus 12:00 midnight.

Commissioner Narum noted that it is 10:00 p.m. in the rear outside.

Chair Pearce stated that this is not precedent-setting and not as rigorous as Barone's which requires intermittent monitoring. She indicated that her inclination is to scale back the hours if there are noise problems and to bring it back to the Commission if there is an issue. She asked the Commissioners if they wanted to have some sort of intermittent monitoring but not as rigorous as that required of Barone's. She added that she was not sure about how good of a gauge this provides with respect to whether or not they are in violation of the noise ordinance.

Commissioner Blank stated the argument about indoor versus outdoor is powerful. He agreed with Commissioner O'Connor that the conditions are crafted well enough that if there is a noise issue, the police will be contacted and they can take decibel measurements.

Commissioner Blank suggested adding signage language to Condition No. 6.

Commissioner Blank moved that the Planning Commission make the conditional use findings as listed in the staff report and to approve Case PCUP 257, subject to the conditions listed in Exhibit A, with the modification to Condition No. 6. that the applicant install directional signage to the designated smoking area, the design and location of which are subject to the review and approval of the Director of Community Development.

Chair Pearce seconded the motion.

ROLL CALL VOTE:

AYES: Commissioners Blank, O'Connor, Narum, Pearce, and Pentin.

NOES: None.

ABSTAIN: None.

RECUSED: None.

ABSENT: Commissioner Olson.

Resolution No. PC-2009-43 approving Case PCUP-257 was entered and adopted as motioned.

Chair Pearce called for a break at 8:47 p.m. and thereafter reconvened the regular meeting at 8:57 p.m.

**b. PRZ-46, City of Pleasanton
Review and consideration of amendments to Chapter 18.104 and various related sections of the Pleasanton Municipal Code regarding Home Occupations.**

Mr. Dolan advised that Julie Harryman will be presenting the staff report in Donna Decker's absence. He explained that staff rebuilt the ordinance rather than fix the existing language as presented to the Commission at an earlier meeting. He indicated that it is performance-based and has a similar framework.

Ms Harryman walked the Commission through how the ordinance would work. She explained that instead of having both exempt and non-exempt home occupations which can be confusing, staff is recommending a simpler process with a zoning certificate and a home occupation or business permit.

Ms. Harryman continued that the zoning certificate is issued over the counter when an applicant meets certain criteria on a checklist. She added that zoning certificates are not appealable, and if violation or non-compliance with any of the criteria would be referred to Code Enforcement, and the applicant would have to apply for a home occupation or a business permit.

Ms. Harryman stated that under the home occupation or business permit category, applicants would complete an application, and notice of the application would be sent out to property owners and residents within a 300-foot radius of the project site. She indicated that the Zoning Administrator will then hold a hearing, and if critical issues are raised, the Zoning Administrator can bring the application forward to the Planning Commission. She added that as in all Zoning Administrator cases, the Zoning Administrator's action can be appealed either by the Planning Commission through the Actions of the Zoning Administrator report or by a neighbor who does not agree with the action.

Commissioner O'Connor requested clarification that a zoning certificate could be issued over the counter by the Zoning Administrator.

Ms. Harryman replied that it would be issued by the planner on duty at the counter, who would go through a checklist and make the determination.

Commissioner O'Connor noted that the ordinance states that it is the Zoning Administrator who issues the zoning certificate.

Ms. Harryman agreed and explained that the City does not have any language relating to the "planner on duty" and that the actual sign off would be done at the counter by the planner on duty. She added that the ordinance could say "Zoning Administrator or designee."

Commissioner O'Connor inquired if there would not be any issues with that.

Ms. Harryman replied that there would be no issues, and if the applicant meets all requirements listed in a. through g., the zoning certificate would be issued over the counter.

Commissioner O'Connor inquired what would happen if a zoning certificate that should not have been approved is issued over the counter.

Mr. Dolan replied that planners make decisions like this everyday and that while occasionally there are mistakes, they consult with Donna Decker or him, or sometimes with several people, when questions arise. He noted that the planners are capable and their judgment can be relied upon.

Commissioner O'Connor inquired if, in a worst-case scenario, there is a mechanism to fix any administrative errors made.

Ms. Harryman replied by giving the following example: Item E states, "No signs advertising the business shall be allowed on the property." If a business with a sign is issued a zoning certificate because the planner did not catch that the box was not checked, the application would become a Code Enforcement matter. The Code Enforcement Officer would then inform the applicant ["he"] that he cannot have the sign and that if he wishes to keep the sign, his zoning certificate would no longer be sufficient, and he would need to apply for a home occupation or business permit.

Commissioner Narum inquired if it would be a case of double jeopardy if the applicant checks the box that he has a sign, which is overlooked by staff, and a zoning certificate is issued.

Ms. Harryman explained that a zoning certificate issued in error does not change the fact that the applicant should not have been issued a zoning certificated and that the application is in another category.

Commissioner Blank inquired if the ordinance is stating that there is no home occupation that does not require a zoning certification.

Ms. Harryman said yes.

Commissioner Blank inquired if someone selling something on e-Bay would require a zoning certificate by this regulation.

Ms. Harryman replied that she believed this would be correct.

Commissioner Blank stated that he could not support such a regulation. He inquired if writing a white paper as a consultant or a web developer or selling something on eBay would constitute a business.

Ms. Harryman replied that these are technically businesses under the City's current ordinance.

Commissioner Blank stated that he felt this was far-reaching and noted that people licensed by the Federal government to do certain things would be pre-empted by this.

Commissioner O'Connor inquired if an author writing a book at home and without any clients would also be considered a business.

Commissioner Narum inquired what types of home occupations or businesses would be expected to require a zoning certificate versus a permit.

Mr. Dolan replied that such things as editing or web designing at home would require zoning certificates. He added that there are people who do not even know that the regulation exists and when they come in to the City to inquire about advertising their business located in a residential district, the City informs them of the requirement.

Mr. Dolan continued that an actual hearing may be required when a business can create issues such as noise or employees or deliveries regularly coming into the home.

Commissioner O'Connor noted that there may be ten percent of the City's population falling under the requirement for a zoning certificate.

Commissioner Blank stated that he felt this kind of approach does not recognize the virtualization of the way people earn livings today. He indicated that he knows regular writers for magazines which would fall under this category. He added that he felt there needs to be some allowance for people who sell on eBay once a week or the author that writes an article once a month or who works on a book. He stated that in his opinion, this requirement was over-stretched.

Commissioner O'Connor noted that there may be employees who are working at home for large corporations and who do not do much more than some of the mentioned businesses.

Commissioner Pentin stated that in his opinion, people who work out of their homes and generate an invoice to get payment for their work would be running a business. He added that when he came to town as an independent producer, he had to have an address to establish his bank account and was told he needed a business license.

Commissioner Blank disagreed. He stated that he did not see as a business a consultant who travels to another city and does work there, and then comes home and generates an invoice to get paid.

Ms. Harryman noted that there is no fee for a zoning certificate and that it is a quick approval that legitimizes a business that can be done from one's home.

Commissioner Blank inquired what is the value added for the City or business owner.

Mr. Dolan replied that the value added is that they have asked whether or not they can conduct a certain business at home, and the City gives an official response that they can. He noted that the only difference is that they checked with the City and found out about the requirement.

Commissioner Blank stated that he is a big believer in not having bureaucracy where it is not necessary. He added that if someone satisfies Items A-G, then no permit is required by the City.

Commissioner Narum stated that it would be surprising to find out how many people have things going on at home that could be construed as a business. She added the goal is to flush those people out, such as when a neighbor disputes the business.

Commissioner Blank inquired why they have to go through Items A-G and why can they not just be considered exempt.

Commissioner Pentin stated that he thought that a person is required to have a business license regardless of whether he is working at a building in town or running a business out of the home. He inquired what the City's business license ordinance states and whether someone identified as running a business out of his house would trigger the referral to Planning.

Mr. Dolan replied that this is how home businesses are generally discovered by staff. He stated that people running a business out of their home come in for a license and they are sent to Planning for a zoning permit. He added that the zoning certificate formalizes the answer they get over the counter.

Commissioner Blank stated that obtaining a zoning certificate should be optional, and people can get one if they desired. He added that should they request a business license and meet Items A-G, they should be exempt and can request a zoning certificate to show to the Business License office.

Chair Pearce inquired if this was already optional as it states "The zoning administrator may issue a zoning certificate."

Commissioner Blank replied that the next item states "shall."

Commissioner O'Connor inquired if there is a penalty involved when the City finds out that someone is running a home business and does not have a zoning certificate.

Mr. Dolan replied that staff would not do anything in this case.

Chair Pearce stated that the zoning certificate would be for the protection of the applicant.

Commissioner O'Connor stated that if it is for the benefit of the applicant, it should then be optional.

Commissioner Pentin inquired that anyone who goes to the business license office would be required to do something.

Commissioner Blank commented that they would not be required to do anything if they meet Items A-G.

Commissioner Pentin stated that if an income is generated from the activity, it would be considered a business.

Commissioner O'Connor inquired if people who rent out their houses were considered business owners.

Ms. Harryman said yes.

Chair Pearce stated that she felt the business should be exempt and that getting a zoning certificate should be optional.

Commissioner Narum stated that for whatever reason a business license is required, she did not believe that it would be the same staff issuing the zoning certificate.

Mr. Dolan clarified that the Business License Division is part of the Finance Department.

Commissioner Blank stated that the applicants would go to Planning for a zoning certificate, take it over to Business License to indicate that their business was authorized, and then obtain a business license.

Commissioner Pentin stated that the key is if the business generates income, how the income is created, and where it originates.

Commissioner O'Connor inquired if someone who has a second unit in the back yard and receives a check from the tenant would be considered a business owner.

Ms. Harryman said yes. She noted that anything that generates an income is a business. She added that people who rent homes is covered elsewhere under landlords.

Commissioner Pentin agreed that any activity that generates an income, whether with an invoice or not, would be considered running a business.

Commissioner Blank stated that one thing the Commission does not have is what requires a business license. He inquired if one was needed for income generated outside the City or for one regulated by the Federal government which, as such, may have a Federal exemption.

Commissioner Narum noted that all youth sports group are required to have a business license although they do not have to pay anything.

Chair Pearce inquired if she would need a business license if she sells things on eBay.

Ms. Harryman explained that someone who generates an income from designing logos or making holiday cards would need a business license.

Commissioner Narum stated that she felt this was simpler and clearer.

Ms. Harryman stated that a business is defined as any activity that includes professions, trades and occupations and all and every kind of calling, whether or not carried on for profit.

Commissioner Blank stated that he did not accept situations where people who sell things on eBay, for example, would need a business license.

Commissioner Blank inquired if a consultant who works for companies outside of Pleasanton would still need a business license.

Ms. Harryman replied that they would need a business license if they conducted business in Pleasanton.

Mr. Dolan stated that this is a routine way of regulating business in every city.

Chair Pearce stated that if this is in line of what is needed for a business license requirement, she supported staff's recommendation.

Commissioner Blank stated that while the regulation has been in effect for some time, he did not believe it takes into account that people make money today on the Internet.

Chair Pearce suggested having this take effect and then deal with that matter at another time.

Commissioner Blank inquired if it was within the Commission's purview to make the zoning certificate optional such that those who need a zoning certificate can come in but those who meet Items A-G but did not want a zoning certificate would not be required to get a certificate.

Ms. Harryman stated that there is also "evidence of doing business: (a) when any person by the use of signs, circulars, cards, telephone books, Internet or newspapers, advertises, holds out or represents the person is conducting business in the City; or (b) holds an active license or permit issued by a governmental agencies, indicating the person is conducting business in the City, or (c) makes a sale, takes an order, delivers goods as a private carrier to any destination within the city, renders a commercial

service or performs any similar act within the City, such facts will be considered prima fascia evidence that the person is conducting business in the City.”

Commissioner Blank stated that if he writes for a magazine regularly that does not conduct business in Pleasanton, he is not conducting business in the City because he does not deliver that to any place in the City.

Ms. Harryman explained that a business license would still be required because the home address is held out where work is being conducted.

Commissioner Blank inquired if it would be considered a business if he pitches a manuscript to a magazine, and the magazine says it would like to buy it from him.

Mr. Dolan replied that he would be pitching from Pleasanton.

Commissioner Narum stated that it would be similar to a consulting work that is being done in Livermore, but because contact information is in Pleasanton, a business license would still be needed.

Ms. Harryman gave an example of a pest control company located in Pleasanton, does not have an office, receives calls in the house, has an ad in the yellow pages, stores some things in the house, and conducts all business outside of Pleasanton generates business out of the home even if there is no business at home.

Commissioner Narum noted that a taxpayer identification number is also required, and some Commissioners noted a social security number is also used.

Mr. Dolan stated that with respect to the “optional” provision, because of the zoning certificate’s relationship to the business license, there is no scenario where one would not need one. He added that a business license will not be granted unless someone can prove that they are allowed at the location, which is what a zoning certificate does.

Commissioner Blank stated that it just does not feel right to require a zoning certificate.

Commissioner Narum stated that she believes this language is far better than the previous one. She notes that Items A-G, with the exception of Item F, are very specific and clearly require a “yes” or a “no.” She indicated that she believes some judgment needs to be applied on Item F and expressed concern with planners having to deal with it.

Chair Pearce inquired what would happen if the resident does not use the dwelling.

Commissioner O’Connor stated that he felt there was a conflict between Items C and F in that Item F states that the business must be incidental and Item C states that only one room can be uses. He inquired if Item F would no longer be incidental if the home were a studio.

Mr. Dolan stated that staff supported the elimination of Item F.

Ms. Harryman stated that Item F is a catch-all and is not needed if Items A-E and G were met.

Commissioner Blank suggested that Item G be modified by adding the word "vibration" after "visually, audibly...."

Ms. Harryman stated that it could be done.

Commissioner Blank stated that he could not support the recommendation if it were not optional. He added that it makes no sense to require an author who writes a book to have a business license.

Commissioner O'Connor noted that there are many people with home businesses who do not have a business license.

Commissioner Narum moved to find that the adoption of the proposed amendments to the Pleasanton Municipal Code are statutorily exempt from the California Environmental Quality Act (CEQA) and to recommend approval of PRZ-46 as shown in Exhibit A of the staff report, with modifications to Section 18.104.030 as follows:

- Delete Item F; and
- Add the words " or vibrations" after "by smell" under Item G.

Chair Pearce seconded the motion.

ROLL CALL VOTE:

AYES: Commissioners Narum, Pearce, and Pentin.

NOES: Commissioners Blank and O'Connor

ABSTAIN: None.

RECUSED: None.

ABSENT: Commissioner Olson.

Resolution No. PC-2009-44 recommending approval of PRZ-46 was entered and adopted as motioned.

Commissioner Blank stated that the reason for his opposition is that he does not believe the ordinance takes into account the reality of the way the Internet and Internet access changes how people make a living in their spare time. He added that he believes requiring a business license of those people who occasionally sell on eBay or of retired individuals who wish to work on their memoirs and then sell them is a gross abuse of that process.

Commissioner O'Connor concurred.

Commissioner Blank inquired whether those people who are licensed by the Federal government to perform certain functions would be pre-empted; for example, the FAA has certain individuals designated as examinees, to examine various people for pilot licenses, who do all of their work at airports, but collect money from such individuals for administering the exam as proctors.

Ms. Harryman replied that if they use their home address, they would require a business license.

Commissioner Pentin stated that if the Federal government generates the bill and the person gets paid by the Federal government, the person would be acting as an employee; however, if the person generates the bill and is paid, it would be a business.

Ms. Harryman agreed.

7. MATTERS INITIATED BY COMMISSION MEMBERS

Follow-Up for Use Permits

Commissioner Narum stated that she would like to discuss the idea of having staff provide the Commission with a one-paragraph update, after a certain period of time, for certain use permits such as Redcoats, which generated a lot of public interest both in favor of and in opposition to the project. She added, however, that she did not want to create additional work for the planners.

Mr. Dolan replied it could be done but that he would prefer that it be on a case-by-case basis rather than as a routine process for every use permit.

Chair Pearce agreed, stating that she believed it could serve as a good follow-up. She added that if there are problems with the use permit, it can be returned to the Planning Commission.

Commissioner O'Connor inquired if the onus could be on the Planning Commission to check on those approved use permits which were somewhat controversial.

Mr. Dolan replied that staff would respond to the request and reiterated that he would not like to make it routine for every use permit. He added that staff could comply with a condition that asks for such information.

Commissioner Blank stated that another option is to place a timeframe for the use permit to come back to the Commission, and if there are no issues, it could be a quick item.

Commissioner Pentin suggested that the decision be left to the Zoning Administrator.

Commissioner Narum stated that she was interested in a follow-up for the Redcoats use permit, adding that she believed it would warrant some serious attention going into the warm weather season, given added activity in the outdoor area.

Mr. Dolan stated that he would be happy to do it in this case or in any case the Commission wants it done, but would prefer not to have this administrative burden on those applications that are not controversial. He noted that the easiest way to ensure that this is done is for the Commission to express its opinion in the form of an additional condition upon project approval. He added that staff will assume that this would be an added condition for the Redcoats approval.

Chair Pearce felt another option would be for a Commissioner to call staff and check on the status of the use permit.

Mr. Dolan advised that if this is done as a condition, staff would place it on a tickler and would know to do it.

Commissioner Narum agreed, noting that it is important that the entire Commission receive the information rather than just one Commissioner.

Commissioner O'Connor noted that there were only two property owners contiguous to the pub who voiced concern with the project.

Commissioner Pentin noted that emails were received, and there were people who supported the business and others who commented that the business was doing whatever it wanted without concern for residents.

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.

d. Designate Two Commissioners to Participate in the Hacienda PUD Modification Task Force

Commissioner Blank moved to nominate Chair Pearce to participate in the Hacienda PUD Modification Task Force.
Commissioner Pentin seconded the motion.

ROLL CALL VOTE:

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

Commissioner Pentin moved to nominate Commissioner Narum to participate in the Hacienda PUD Modification Task Force.
Chair Pearce seconded the motion.

ROLL CALL VOTE:

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

e. Adoption of the Planning Commission Schedule of Meeting Dates for 2010

Chair Pearce noted her absence on November 10, 2010, her birthday. Commissioner Narum noted her absence in June on her birthday, as well.

Approval of the Minutes

Chair Pearce advised that consideration of the Minutes for the October 14, 2009 and October 28, 2009 would be continued to the next meeting when Commissioner Olson would be present. She added that the Minutes would not be re-copied for the packet.

9. COMMUNICATIONS

No discussion was held or action taken.

10. REFERRALS

No discussion was held or action taken.

11. MATTERS FOR COMMISSION'S INFORMATION

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

There were no reports.

12. ADJOURNMENT

Chair Pearce adjourned the Planning Commission meeting at 9:54 p.m.

Respectfully,

DONNA DECKER
Secretary