



PLANNING COMMISSION MINUTES

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

APPROVED

Wednesday, August 12, 2009

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

CALL TO ORDER

The Planning Commission Regular Meeting of August 12, 2009, was called to order at 7:00 p.m. by Chair Pearce.

1. ROLL CALL

Staff Members Present: Donna Decker, Principal Planner; Julie Harryman, Assistant City Attorney; Steve Otto, Associate Planner; and Maria L. Hoey, Recording Secretary

Commissioners Present: Chair Jennifer Pearce, Commissioners Phil Blank, Kathy Narum, and Jerry Pentin

Commissioners Absent: Commissioners Greg O'Connor and Arne Olson

2. APPROVAL OF MINUTES

a. July 22, 2009

Commissioner Narum proposed that consideration of the Minutes be continued to the next regular meeting due to the absence of two Commissioners.

Chair Pearce moved to continue consideration of the Minutes of July 22, 2009 to a future meeting date.

Commissioner Blank seconded the motion.

ROLL CALL VOTE:

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

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 and omissions to the Agenda.

5. CONSENT CALENDAR

- a. PDAM-2, Ken and Pamela Chrisman**
Application to extend the Development Agreement for five years for the property located at 1944 Three Oaks Drive (formerly 1944 Vineyard Avenue), in the Vineyard Avenue Corridor Specific Plan Area. Zoning for the property is PUD-LDR (Planned Unit Development – Low Density Residential) District.

Chair Pearce stated that a member of the audience had submitted a speaker card for this item and indicated that this item would be pulled from the Consent Calendar and be heard as the first Public Hearing item.

6. PUBLIC HEARINGS AND OTHER MATTERS

- (5.a.) PDAM-2, Ken and Pamela Chrisman**
Application to extend the Development Agreement for five years for the property located at 1944 Three Oaks Drive (formerly 1944 Vineyard Avenue), in the Vineyard Avenue Corridor Specific Plan Area. Zoning for the property is PUD-LDR (Planned Unit Development – Low Density Residential) District.

There was no staff presentation.

THE PUBLIC HEARING WAS OPENED.

Mary Roberts stated that she was initially concerned with the staff report for July 22, 2009 and thanked staff for amending it. She indicated that she is sympathetic for what the Chrisman's are trying to do and added that the staff report now indicates that the

payment for the Specific Plan will follow the five-year increase for the extension. She noted, however, that she did not believe this was a major project to move forward with and that nothing is currently happening on the property. She stated that the 14 lots have been sitting for over a year due to the economy. She voiced concern with precedent-setting, such as with the Lin property.

Frank Berlogar expressed support for the Chrismans' application. He cited the harsh economic crisis and urged the Commission's support for an extension on their development agreement. With respect to the Lin's property, he stated that he believed the Council and the Commission will be able to address the bridge.

Commissioner Blank disclosed that he knows Mr. Berlogar personally but has not discussed the matter with him.

Jim Happ, applicant, clarified that contrary to what Ms. Roberts indicated in her letter that the Chrismans had not contributed anything to the City, the Chrismans had, in fact, paid a full share of the design cost for the new Vineyard Avenue and the Vineyard Trail, and had dedicated the right-of-way.

THE PUBLIC HEARING WAS CLOSED.

Commissioner Blank moved to recommend approval to the City Council of the extension of the development agreement between the City and the Chrismans, subject to the condition that the Chrismans pay the specific plan preparation fee when the Final Map is submitted for approval. Commissioner Narum seconded the motion.

ROLL CALL VOTE:

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

Resolution No. PC-2009-25 recommending approval of PDAM-2 was entered and adopted as motioned.

- a. **PCUP-249, Joseph and Maricela Barone
Application to modify the approved Conditional Use Permit (UP-88-25) for the operation of Barone's Restaurant located at 475 St. John Street to allow outdoor music and entertainment. Zoning for the property is CC (Central Commercial) District and Downtown Revitalization District.**

Steve Otto presented the staff report and discussed the background, layout, and key elements of the project.

Commissioner Blank inquired if the hours of operation are the same as those of Redcoats and if staff reviewed the other conditions for Redcoats.

Mr. Otto replied that the proposed hours of operation are the same as Redcoats and that staff looked at some of its standard conditions, including the monitoring of surrounding area to ensure orderly activities.

Commissioner Blank referred to Condition No. 7 which states that food service is required to be made available to patrons during the operating hours of the business. He noted that in the past, the Commission has always required that food service be made available during hours alcohol is being served.

Mr. Otto clarified that the applicants will serve food during alcohol service.

Commissioner Blank inquired if Barone's has a full bar.

Mr. Otto replied that the applicants have a full alcoholic beverage license.

Commissioner Narum inquired if the applicants' request is to be able to serve alcohol from 6:00 a.m. to closing and what the previous citation issued was related to.

Mr. Otto confirmed that alcohol service from 6:00 a.m. to 2:00 a.m. is proposed, with slightly different hours proposed by staff. He further stated that the incident report states that the citation was given for music that was too loud; however, it was later determined that it was for music playing too late rather than too loud. He added that staff contacted the police officer and made him aware of the error, explaining that Barone's was not in violation of the noise ordinance because the measurement was about 63 decibels approximately 25 feet from the residential property line, and a level of up to 70 decibels is allowed before 10:00 p.m. at the property plan of the Barone's Restaurant site.

Commissioner Narum recalled that when Baci wanted to serve alcohol beyond 10:00 p.m., the City conditioned it to require its wait staff to undergo TIPS (Training for Intervention Procedures).

Mr. Otto stated that this condition has been added to some applications, but the condition was not included in the current application.

THE PUBLIC HEARING WAS OPENED.

Maricela Barone, applicant, stated that she and her husband have owned and operated Barone's Restaurant since 1995. She noted that theirs is one of the oldest restaurants in the Downtown and that they take pride in their business, envisioning creating an atmosphere like the Hog's Breath in Downtown Carmel. She added that they purchased the property next door to provide ample parking with the idea that they could provide entertainment to the City. She stated that their children attend Pleasanton

schools and that they have always given back to the community through fundraisers. She stated that she consider sounds from the train and music to be part of the Downtown.

Ms. Barone stated that due to the economic situation, they have had to close their lunch business and lay off employees; additionally, they have also renovated and opened up their patio. She noted that the Pleasanton Hotel has been holding Thursday night events until 10:00 p.m., which recently ended due to the closing of the business. She added that her customers are thrilled that they are able to provide music and a venue similar to the Hotel. She noted the current decline in the business but stated that she has seen a thriving Downtown and believed that in order for their business to be successful, entertainment is needed. She stated that she supports staff's recommendations and conditions of approval and requested the Commission to approve their request.

Peter MacDonald, applicant's attorney, stated that the Barones are proposing more evening vitality to the Downtown. He noted that they agree with the conditions of approval and the staff recommendation to limit their hours of operation. He pointed out that the City will dedicate millions of dollars to the Fire House Arts Center which will also bring more business Downtown, and added that there must be additional activities for businesses to stay open in the evening such as what the Barones offer in their business.

Mr. MacDonald stated that Pleasanton is facing competition from Livermore which is determined to be the evening gathering place for the Tri-Valley. He stated that he believed that Pleasanton has a superior Downtown setting and customer base and that better businesses are ready to stay open for customers in the evenings. He indicated that one issue that may arise is the 9:00 p.m. versus 10:00 p.m. music cut-off because a band cannot be purchased for half a night. He stated that some residents would prefer music to stop at 9:00 p.m., but many residents have also expressed support for music to end at 10:00 p.m. He added that limiting or setting a standard for music and events limits the Downtown experience to far more people who want to live and experience near vibrant evening activity. He cited the support of the application from Jim Hoge, member of the Museum Board and who resides in the Kimberly Commons complex, as well as Kristin Davidson-Banducci and John Mederos who live on Walnut Drive.

Mr. MacDonald noted that the Pleasanton Downtown Association supported the Kimberly Commons' approval in 2005, subject to the stipulation that residents be informed that this is a Downtown and that there will be nighttime music and activity. He cited Condition No. 28 of the Kimberly Commons' PUD: "The CC&R's shall clearly state that the property is located in the Downtown area where businesses such as restaurants, nightclubs, hotels, and theaters are open late at night. These and other nearby uses may create noise, parking, and other impacts." He indicated that the landlord needs to tell his tenants that Downtown activities were part of the deal all along and that this is not a changed condition. He added that similarly, the townhouse project and the homes on St. John Street on the other side of the railroad track were each

rezoned from Commercial to Residential to allow residents to live near the Downtown but not to change the Downtown.

Mr. MacDonald stated that staff is correct to follow the noise ordinance, which is 70 decibels for commercial property until 10:00 p.m. and 60 decibels after 10:00 p.m. He noted that at 9:00 p.m. on Thursday evening, he stood at the property line of the Churka residence while the band was playing, and the decibel reading bobbed between 58 and 62 decibels; the background reading with no band playing was between 55 and 60 decibels. Mr. MacDonald reiterated that Barone's will bring more customers and evening life to the Downtown and added that approval of their request is important to their economic success.

Commissioner Blank noted that Commissioner Narum brought up the TIPS program, which the City has incorporated into the late evening approvals for those who serve alcohol to recognize signs of intoxication, and he asked Mr. MacDonald if this is something the applicants are willing to consider.

Ms. Barone stated that they are familiar with TIPS and have had that training in their restaurant.

Commissioner Pentin referred to the statement that no complaints were received after 10:00 p.m.; however, one report shows the time as 10:21 p.m.

Joe Barone, Applicant, stated that he believes the first citation issued was at 10:21 p.m. He noted that the Pleasanton Downtown Association letter that was issued through the City concerning the 9:00 p.m. umbrella was never sent to any of the businesses, and his understanding was that the noise ordinance was still 10:00 p.m. He added that once he realized they were past the 10:00 p.m., they shut down the music immediately. He added that for the second and third citations, there were no decibel readings on the tickets. He acknowledged that they were completely wrong only on the first citation, and this was due to the fact that they did not receive notification that the 9:00 p.m. ordinance was in effect.

Commissioner Pentin inquired whether the Barones have thought about a back stage with some baffling so that sound is projected into the patio area and not into surrounding areas.

Mr. Barone replied that the stage faces the Rose Hotel and Pleasanton Hotel, noting that they designed it intentionally this way.

Commissioner Pentin inquired if the Barones would consider talking to an acoustical consultant to discuss the stage set up such that the sound is directed backward rather than toward the neighbors.

Mr. Barone replied that he would.

Diane Churka stated that she supported the Commission allowing music until 10:00 p.m. but wanted the Commission to set parameters. She noted that the officer gave the Barones the CC&R's regarding noise and that a total of three citations were received, one of which was after 10:00 p.m.

Ms. Churka stated that they moved to St. John's Court in 1988, and Casanova's was where Barone's is. She indicated that the Pleasanton Hotel played music all day long, including weekends, and their quality of life downtown has been compromised. She added that dogs start barking at 7:15 a.m. from the kennel all year long and especially loud on holiday weekends; trains run six to seven times per night which has increased as the economy improved; the Amador High School band practices, garbage trucks come by before 6:30 a.m., and when the bars close, there are loud noises from loads of glass bottles being thrown into the restaurant dumpsters.

Ms. Churka noted that Casanova's had no outside entertainment. She expressed opposition to Barone's having music seven days a week but would support four days a week. She indicated that while she and her husband knew they were buying into a commercial district, the Barones also knew they were buying in a residential area; she asked for some give and take.

Ms. Churka stated that she has heard music as high as 85 decibels. She added that the music rocked their house so they must close their windows, turn on the air conditioner, and turn up their TV. She indicated that she did not understand the distinction the Commission has made between the front and back decks because the front is exposed to businesses, and there are numerous homes in the back deck area that are impacted. She added that theirs is the only home in front of the Barone's property line that is not buffered by a garage or a room, and she questioned what would happen when Farmer's Restaurant has outside entertainment.

Ed Churka stated that he believes the business owner that rents a restaurant from him at 780 Main Street will also request to do the same since the Commission will set a precedent by setting the hours until 2:00 a.m. He indicated that conditional use permits (CUP) are permitted for only six months and inquired whether or not the permit will be monitored. He noted that the Barones have violated the permit three times already and inquired if the noise ordinance will be changed. He cited places that have closed in the Downtown because of noise concerns and inquired how long the City will allow this to continue. He then set a decibel reading meter at 65 decibels and played music to that level so the Commission could experience the music that they are exposed to.

Andrew Shaper stated that he lives two blocks from Barone's Restaurant and indicated that while he has been very supportive of many Downtown activities, he questioned precedence and consideration. He indicated that he understands the need for a viable commercial establishment but that the area has also been a residential neighborhood for 150 years. He noted that he did not want to see the economy used as a leverage point to set a precedent that makes the Downtown singularly a nightlife draw with no respect for the neighbors. He also cited similar problems with events at the

Fairgrounds. He then asked the Commission to consider what it can do to support the Downtown and allow music only inside the building due to noise impacts of outdoor music to neighbors.

Jack Bras stated that he received an email from the Chamber of Commerce asking people to come to the meeting and support Barone's, and that he replied with a statement that Barone's has played music so loud that it constituted a noise nuisance to him at Pleasanton Heights three miles away. He indicated that has never had a problem until the last few years with a noise explosion from Barone's, the Concerts in the Park, the Fairgrounds booking groups that believe people are hard of hearing. He noted that if Barone's is allowed to play music until 10:00 p.m., it should be monitored between 9:00 p.m. and 10:00 p.m., and if they are not conforming to the decibel rating, they should revert to 9:00 p.m.

Stacey Blaney stated that she owns a business in town and does not live far from the Downtown. She spoke about the family enjoyment of having activities and vitality in the Downtown which support businesses. She indicated that she knows the police monitor the level of music at the Concerts in the Park. She added that she has attended two of Barone's events in the back patio and feels they have been conscientious about neighbor impacts. She indicated her support for holding music until 10:00 p.m. and having events during the week.

Diane McRae stated that she has been a resident and business owner for 13 years. She indicated that she lives closer to Foothill High School and is often awakened by the high school band and garbage trucks every Tuesday morning. She stated that she personally wants to see a Downtown that is successful and alive with music and believes it is important for property values. She invited everybody to visit Barone's and enjoy the atmosphere.

Mark Dunlap stated that he noticed that there are about 20 to 30 local people working at the restaurant and believes that the restaurant provides employment in a tough economy. He added that the restaurant's increasing popularity would help those working there.

Charles Hunter stated that he has lived on St. John Street only yards opposite the Barone's parking lot for the last 15 years and expressed his opposition to the Barone's request. He indicated that he believes the proposal would present a harmful intrusion materially affecting his property values and his reasonable enjoyment of his property. He added that he and his wife go to bed at 9:00 p.m. because they must get up early, and the temporary music permit would affect their health and well-being even if the music were to cease. He stated that the extension of Barone's business hours would generate a significant spillover effect for some time afterwards, resulting in increased noise in the parking lot. He noted that the later it gets, the louder customers get because they have been drinking, and they have turned on their car alarms, which is extremely annoying and disruptive to him and his wife.

Mr. Hunter stated that he feels Mr. Barone has demonstrated a complete and repeated lack of compliance and believed he will not be any more compliant with a 10:00 p.m. restriction. He noted that congestion and public safety on St. John Street and Peters Avenue have caused a significant impact, and any expansion of the hours they can serve alcohol will inevitably increase instances of drinking and driving, will harm his and his neighbors' property values. He stated that he felt the Barones were using the economic downturn to seek a permanent change that will have lasting harm to neighbors. He added that the request does not present a balance of interests and noted that 15 years ago, live music was not allowed at Barone's, and Casanova's closed no later than 11:00 p.m. He stated that although he does not believe live music is generally appropriate Downtown, it is not appropriate off of Main Street and next to a high density residential area. He asked the Commission to consider the impacts of noise and the permanent stage the Barones are proposing.

Kerry Ostrander stated that she has lived on St. John Street for 15 years and loves the general noise and Downtown feeling; however, she believed the key is compromise. She indicated that she has no problem with Barone's having a band on Friday or Saturday nights; but because she is a high school English teacher, she and goes to bed very early some nights, and she would find it incredibly intrusive to hear music that she normally enjoys during the week. She stated that a compromise would be to limit the number of days and times for Barone's to start and cease music. She noted that allowing music every night of the week changes the picture unpleasantly and voiced support for compromise.

Dennis Wilborn stated that he lives on St. John Street adjacent to and 50 feet from Barone's parking lot and 150 feet away from the stage area in the rear patio area. He distributed photographs of views from his bedroom window and acknowledged that the parking lot and Barone's Restaurant existed when he purchased the townhome in 2004. He indicated that he supports a vibrant downtown but questioned the timeframe of operating until 10:00 p.m. in the patio area, which impacts his ability to operate his business which starts at 4:00 a.m. He noted that he will suffer from sleep deprivation but that those who live on St. John Court will take the biggest impact as sound waves pop off of the Rose and Pleasanton Hotels into their complex. He added that the decibel readings taken are at head level, but the sound propagates up and out, and, therefore, the readings are not accurate. He also acknowledged that residents share spillover noise from living in the Downtown, and if the music stops at 9:00 p.m., the spillover effect lasts until 10:30 p.m.

Mr. Wilborn stated that he believed the City's noise ordinances is out of date and that noise pollution in the range allowed is contributing to health issues and various illnesses. He recommended that because both performing areas are in line of site with the eastern boundary homes, the limit be set at 9:00 p.m. during the week and on 10:00 p.m. on Friday and Saturday. He also requested to reduce the acceptable decibel level to 60 at the property line, limit the number of performances to no more than three per week, and require noise monitoring to be presented to the Commission and to staff.

Lee Busey stated that he is a senior citizen and supporter of the restaurant since it was Villa Armando, then Casanova's, and now Barone's. He added that he thinks people need to adjust over time and compromise, but supports the venue at Barone's. He noted that he has been to all events on Thursday evenings and does not think they are out of line. He suggested maintaining the decibel levels and keeping neighborhood residents in mind. He indicated that he felt it was a viable entity with much support and that it would be a shame to do anything to stop it.

Troy French submitted a speaker card but had to leave. He asked a member of the audience to speak on his behalf to express his support of Barone's.

Mark Kearns stated that he owns a commercial building on Spring Street a block away. He indicated that he supported Barone's and that he is considering developing a residence behind his commercial building. He noted that if people choose to live Downtown, they should share in the goings-on of Downtown, that 9:00 p.m. is too early to close, and that it was cutting it close for families to have an enjoyable evening. He indicated that he had gone to two of the Thursday night events and that there were probably 400 people at Barone's, as well as a lot of people Downtown where businesses benefitted from the revenue brought in. He expressed his support for music until 10:00 p.m. and requested approval for the proposal.

Jim Vlamis stated he has lived in Pleasanton since 1968 and complimented the Commission and business leaders on what has transpired in Pleasanton since 1968. He stated that he felt differentiation is everything and supported Barone's Restaurant, whose owners have developed a great atmosphere for all age groups. He noted that music was needed Downtown for business and the City's value. He indicated that weddings held at the Pleasanton Hotel go until 11:30 p.m. at times and asked the Commission to support the request.

Vic Malatesta stated that he has owned Vic's All Star Kitchen for the last 17 years and that he has been in the restaurant business for 42 years. He indicated his support for the Barone's request and feels they have shown a compromise and willingness to work with staff. He requested the Commission to approve the application.

Michael Knuppe stated that he owns the properties formerly known as Kimberly Commons and that one of his tenants has expressed concern about the noise. He stated that this tenant, who owns the Sunol Nursery and is up at 4:00 a.m. to be at work by 6:00 a.m., has given notice that he will leave if there is noise until 11:00 p.m. Mr. Knuppe stated that he felt a compromise can be developed that works for everyone. He suggested that more work go toward the TIPS program and presented Mr. Barone a glass that he found in his bushes.

Blaise Lofland stated that he has been in business since 1986 and supported Barone's request to extend hours for entertainment. He cited the importance of having an opportunity for entertainment and added that it would be great to make everybody

happy 100 percent of the time, but that compromises can be made to work. Mr. Lofland stated that he believed the part of town which would impact the least amount of people was Barone's Restaurant and the Pleasanton Hotel. He indicated that he has heard comments regarding noise from the Fairgrounds, from barking dogs, and from parking lot noise, but that he fully supported the request and enjoys the benefits Barone's has to offer.

Kevin Gallagher stated that he lives on First Street across from the Farmers' Market and that he hears the Concerts in the Park, the Farmers' Market, movies in the park, and soon the Firehouse Theater, the reasons he moved to the Downtown. He indicated that he felt the City was losing patrons to Livermore, Walnut Creek, and Danville. He added that living Downtown has some impacts but that none affect him on a regular basis. He noted that he starts his days between 3:30 a.m. and 4:00 a.m. but that the positive aspects far outweigh any negatives from living Downtown. He stated that he felt Barone's is a great opportunity and is Pleasanton's chance to make the Downtown vibrant. He stated that he gets offers from friends to rent rooms just to be Downtown and noted that comments he has heard from people over the years is that the town closes early, which is a negative. He stated that consistent updates must be done for generating business and he asked the Commission to approve the proposal.

Scott Raty stated that there was no greater adverse impact than the railroad that runs behind residential units. He agreed the recession has been difficult and felt the Barone's have seized on an opportunity. He noted that people are not traveling or going to destinations, but are looking for entertainment and value closer to home. He added that the City has a unique opportunity to further the Downtown for entertainment and that he supported the Barones for leading the way. He stated that he felt they bring not only a restaurant business but also their home next door, which is a double investment. He urged the Commission to support staff's recommendation and approve the request.

Jenny Boyd stated that a better compromise is to have music on Thursday, Friday, Saturday, and Sunday. She suggested a new idea that the Barones build a hall with proper soundproofing which would allow music until later hours.

Rhonda Sorochak stated that she chose to move Downtown on St. John Circle in December. She added that she thought the train would have been a concern in terms of noise but that it is not. She indicated that she loves music and supports Barone's proposal. She noted that several venues Downtown have live music; the Pleasanton Hotel plays music on the opposite side of the fence and questioned whether it was fair for other venues to be able to play music. She suggested supporting the Downtown, given the economic conditions, and believes that getting people out, spending money, and employing people will help. She indicated that she has children in three schools in town and noted that the Barones support the school financially and with their time, as well.

Sue Wilson said she and her husband moved to the Downtown over two years ago; they live in the St. John neighborhood and they hear the Fairground noise, dogs, the high school, trains, and they like to go to bed early during the week. She finds it hard to hear people complaining about the downtown noise when they chose to live in the downtown. She formed their own P-Town Citizens Group at Yahoo to help with the vitality of the downtown and said their group supports the Barone's. The Barone's provide an amazing professional setting, she hoped for a compromise and supported approval.

Frank Berlogar voiced support of the application and stated that Downtown is for all of Pleasanton. He urged the Commission to approve the project.

Jan Batcheller stated that her first business was the Photo Plant in 1975. She added that she lives in the Downtown and supports the Barone's, who have the best restaurant in the Downtown. She indicated that noises Downtown is to be expected and asked everybody to support the Downtown Association. She then urged the Commission to adopt staff's recommendation.

Sharrell Michelotti stated her support for the Barones and their wonderful restaurant. She echoed the comments from supporters and said that Pleasanton has come a long way. She noted that the Downtown has been renovated and that the Barones have been a big contributor. She indicated that she has been active in the community and over the years has promoted a pedestrian-friendly atmosphere, which has been created. She stated that she felt the Downtown is a draw and needs to be kept vibrant. She expressed her support for staff's recommendations.

Melanie Sadek stated that she owns Murphy's Paw on Main Street and lives in town. She agreed the Barones were wonderful people and as a business owner in the Downtown, all she has heard about is Livermore and that Pleasanton has nothing going on in the evening. She indicated that merchants worked together with the Downtown Association to do Wednesday Night Live, and this was the reason they requested the temporary use permit to allow live music until 9:00 p.m. She stated that she has heard from many businesses that the live music on Wednesday nights has helped businesses, and she felt it was an amazing draw. She noted that said they lose many people to Livermore after 9:00 p.m., which has restaurants that can serve alcohol until 2:00 a.m. She stated that live music draws business and creates a good environment and asked for Commission approval of staff's recommendation.

Christine Saldivar, Executive Director, Pleasanton Downtown Association, stated that nighttime vitality is a key point if the City wants to have a growing and vibrant Downtown. She indicated that every Downtown has found entertainment to be the factor revitalizing them. She added that she believed Barone's has done a wonderful job and pointed out that being Central Commercial zoning provides opportunities for establishments for the convenience of the public. She noted that Barone's meets the needs of the community and supports businesses in the Downtown. She encouraged the Commission to support approval of the CUP.

Sue Martinovich stated that she has owned the Pleasanton Hotel for 30 years and opened the Farmer Restaurant. She indicated that she is in favor of Barone's application, agrees with the need for vitality in Downtown Pleasanton, and asked for the Commission's approval.

Mike Madden stated that he most likely has the closest bed to the stage area and echoed comments about the Barones and their great track record and noted that everything they have done is fantastic. He added that he believed people who purchase a liquor license to serve after certain hours abide by the conditional use permits and that if there are problems, they would fix it and make it right.

Robert Tucknott stated that he lives right across from the Fairgrounds and felt that any activity is great for the community. He echoed comments made by the other speakers and indicated that music is a great thing. He indicated his support for Barones and the Downtown and added that Barone's brings people to the community.

Otis Nostrand stated that he is also a restaurant owner and resident in town and that he agrees with supporters. He added that he agrees with some of those who cite noise as problems but felt there is a solution. He asked for the Commission to support the Barones' request.

Andrew Gelb stated that when he moved from Los Angeles to Pleasanton eight years ago, he ate his first dinner at the Barone's Restaurant. He indicated that he supports activity, noise in the Downtown, and good times. He added that he was impressed with how genuinely and sincerely the Barones have agreed to making compromises and that he felt any problems could be worked out. He agreed that the Commission must find a reasonable balance and asked for its approval.

Michael O'Callaghan stated that he has been a homeowner and business owner in the Downtown in excess of 22 years and that he professionally mediates and negotiates for the construction industry. He noted that what staff has prepared is a mediated version and does not need for further negotiation. He stated that he moved to the Downtown for similar reasons given by speakers. He noted that he had a train coming by his house 25 times a day and that the biggest entertainment was the fire siren ringing, as well as the 32 unrestricted bars without use permits. He asked the Commission to support staff's position and approve the request.

Mr. MacDonald stated that he hopes the Commission noticed that far more residents who live Downtown came in support than in opposition. With respect to setting a precedent, he noted that the noise ordinance is one, around which the staff recommendation is built. He expressed hope that the proposal is not killed with details.

Mr. Barone thanked everybody for offering their opinions both pro and con, and stated that his intentions were never to anger anybody in the neighborhood. He noted that they have worked with the St. John townhomes for years regarding issues relating to

respect to glass and bottle noise issues and leaf-blowing. He stated that their intentions are not to play seven days a week but asked that they be allowed the option and some flexibility, given requests. He stated that their current plan is to use the grounds on Thursday evenings only, and if guests encourage them, they may hold events on Friday and Saturday nights as well.

Mr. Barone stated that they bought the restaurant, which was zoned commercially, well before the townhomes were there, and to point the finger at Barone's for glass in the bushes or for using on-street parking is not fair. He indicated that he did not appreciate comments that he would not comply with the conditions after he has been doing business for 14 years and assured the Commission they will shut down the music at 10:00 p.m. He suggested that noise readings be taken and thanked the Commissioners for their consideration.

Commissioner Narum asked Mr. Barone how they would keep noise at a level that would meet the ordinance.

Mr. Barone replied that they have never exceeded a 70-decibel reading and did not know whether Mr. Churka's meter is calibrated as he [Mr. Barone] got a reading of 62 decibels on the night in question.

Ms. Barone clarified that they understood that because of precedence for the last 20 years, Downtown businesses have had music until 10:00 p.m. and that she thought this was still the case. She stated that the first time police arrived, they did not know they needed to shut down and that they had a decibel reading which did not exceed the ordinance. She added that they were made aware on the second night that music was allowed only until 9:00 p.m., and when they realized then that they exceeded this time by about five minutes, she ran on the stage and announced it, such that when the police came, they could not even pick up a decibel reading. She stated that the third time the police came and shut them down, there was no decibel reading. She indicated that they do not want to anger anyone and that they respect the neighbors. She noted that they would like to close at 10:00 p.m. and that even at the highest point, the decibel reading was never above 70 decibels.

Commissioner Blank inquired Ms. Barone if she had thought about a way to monitor or ensure they do not exceed the 70-decibel level.

Ms. Barone reiterated that they have never exceeded 70 decibels.

Mr. Barone replied that they had purchased a meter and if required, will take readings at certain points of the evening and record it.

Ms. Barone agreed to monitor the noise and added that they can also start to lower the music at 9:30 p.m.

Commissioner Pentin inquired if the Barones would go to the neighbor's property line and monitor the noise from there.

Mr. Barone replied that the property line is where they can take the reading.

Commissioner Narum stated that she would like to know that the noise ordinance is going to be met and that there is a way to monitor readings so as not to impose on the police to come out each time.

Ms. Barone agreed to monitor the noise and take readings.

Commissioner Narum noted that the Barones are requesting to open at 6:00 a.m. and inquired if this was for every morning.

Mr. Barone replied that the only reason they proposed to open at 6:00 a.m. is to provide for flexibility to accommodate a corporation that asks them to prepare breakfast for 100 people at 8:00 a.m.

Commissioner Pentin inquired if the Barones have held discussions with The Farmer Restaurant and Main Street Brewery about their live nights and the combination of all three which may raise the decibel level in the area.

Mr. Barone replied that they initially took the Thursday night spot and does not know if Main Street Brewery had music or not, although he is aware that the owner is interested in doing a Wednesday night event. He stated that he believed there may be times when all restaurants would be playing music.

THE PUBLIC HEARING WAS CLOSED.

The Commission took a break at 9:06 p.m. and reconvened the regular meeting at 9:17 p.m.

Commissioner Pentin noted that a comment was made that CUPs have a time limit and asked staff if that was accurate.

Mr. Otto replied that the comment refers to exemptions from the noise ordinance for limited periods of time for CUPs. He added that CUPs do not have a time limit and run with the land.

Commissioner Blank stated that in the past, the Commission had received the opinion [from the City Attorney's Office] that a time limit can be imposed on a CUP and that a CUP can be made to expire even though it runs with the land.

Julie Harryman agreed with Commissioner Blank's statement. She clarified, however, that the question was whether or not it was mandatory, and it is not mandatory because

the sections do not apply since they are not asking for an exception to the noise ordinance.

Commissioner Blank requested clarification that the Commission could place a time limit on a CUP.

Ms. Harryman replied that was correct.

Commissioner Pentin noted that one speaker stated there were a number of citations, and the staff report indicates that there were complaints but only one actual citation.

Mr. Otto confirmed that staff was only aware that one citation was issued.

Commissioner Blank stated that he has some baggage on both sides of the equation: one side is that when one does move into a Downtown, there is a certain amount of baggage that comes with it, similar to those who buy houses near airports and then complain about the noise generated by airplanes; and on the other hand, he questioned where it rises above the level of reasonability. He noted that some of the tools he thought the Commission may want to think about is enforceability, ensuring that the City does not look down the road with regret, limiting the number of days music is allowed to five or six days, but not to a specific day to allow flexibility.

Commissioner Blank stated that he believes TIPS should be done, and with respect to monitoring, he stated that he does not want to micro-manage but thinks one of the things the Commission could require is a monitoring device that would record decibel levels on a paper graph, as directed by the Director of Community Development. He noted that it appears the only time in question would be from 9:00 p.m. to 10:00 p.m.; the recording could be done at random, and if it does not exceed 70 decibels, then there is no issue, but if it does, the applicant would can be given an opportunity to mitigate the problem and return to the Planning Commission.

Commissioner Narum stated that the point of taking the readings is that she did not want to create work for the Police Department, so if there is a problem, the Barones can immediately react to it and alert the band. She indicated that she would also like to see staff work with the Barones to record the decibel reading so there is a record to document what was done in case of any complaints.

Commissioner Blank ask staff if a condition could be crafted along the lines of what Commissioners Narum and he are proposing.

Ms. Decker replied that staff could do that.

Commissioner Pentin stated that there could be a problem with neighbors arguing that the noise level is 72 decibels at one house and 68 decibels at Barone's, which could still involve the police. He added that what would be better is if there were a digital reading or paper record that can be literally looked at. He suggested that the Barones work with

an acoustical expert to determine how this could be done. He indicated that he did not want the Commission to have to talk about the same issue six months down the line.

Chair Pearce noted that if the meters are appropriately calibrated, they will get the same readings at the same places. She asked staff what the process is by which this might return to the Commission if Barone's exceeds the decibel level, if a complaint is made, and if police are called and a citation given. She stated that provided something is crafted and approved, she did not want residents to think there is a great "black hole" without the ability for neighbors to complain or the situation to be resolved.

Ms. Decker stated that if the conditions of approval were compromised by operations or not maintained and derived through complaint, the City would send its Code Enforcement Officer out to the site. She added that in the past, staff has visited properties to verify the complaint and to determine whether or not there was compliance, based on the City's calibrated reading device. She noted that should complaints persist, staff would discuss the matter with the owner and try to find a way to mitigate the issue with the neighbors and business owner. She indicated that oftentimes, it has been suggested that an acoustic engineer do a separate reading and evaluate what could be done. She noted that if the problem were still to persist, staff would bring the matter to the Commission for review and consideration of what could further be done.

Commissioner Narum stated that Barone's was a great addition to the Downtown and wants to see it successful but that she was a little concerned with an approval that may result in continual complaints. She supported that monitoring be done by the Barones, who can immediately tell the band to turn down the volume, and was inclined to initially limit the music to five days per week without indicating specific days. She also expressed support for an opening time of 6:00 a.m. but voiced some concern with staying open on a Sunday until 1:00 a.m. and then re-opening five hours later.

Commissioner Narum stated that she was not aware that parking existed at the back and asked for a sign to indicate that. She added that with reference to Condition No. 2, she has a problem with allowing Barone's to stay open until 1:00 a.m. on the Wednesday before Thanksgiving which she believed is not reasonable for residents who would be with family preparing for Thanksgiving. She suggested limiting the music and the number of days to be open at 6:00 a.m., and if after a time, the restaurant is successful without complaints, she would be open to entertaining increasing the number of days.

Commissioner Pentin stated that he was not in favor of micro-managing, and referring to opportunity, he noted that if Barone's is already booked to open at 6:00 a.m. for five days and additional opportunities arise thereafter, he felt it would be a detriment to business to turn that opportunity down. He further questioned who would keep track of and enforce the five days on any given week for early morning openings and night music.

Commissioner Narum stated that she had hoped the applicant would and that they would work closely with the residents as well.

Commissioners Blank moved to make the conditional use findings as listed in the staff report and to approve Case PCUP-249, subject to conditions listed in Exhibit A of the staff report, with the following modifications: (1) Add a condition that the waiting staff shall undergo a training program, such as TIPS (Training for Intervention Procedures), designed to prevent intoxication, underage drinking, and drunk driving; (2) Add a condition that the applicant shall work with the Director of Community Development to provide acceptable directional signage for the Barone's parking lot; (3) Add a condition that the applicants shall consult with an acoustical engineer to determine whether any additional noise mitigations could be done prior to the starting of music after 9:00 p.m.; (4) Modify Condition No. 4 to require the applicant to work with the Director of Community Development and staff to determine selection and placement of a recording device that will record and create a record of sound between 9:00 p.m. and 10:00 p.m. and that would notify the Barones should the noise exceed 70 decibels; and (5) Add a condition that amplified outdoor music and early morning openings shall be restricted to six days per week. Commissioner Narum seconded the motion.

Commissioner Pentin suggested that the six days be specified so the neighbors would know which day there will be no night music.

Commissioner Blank stated that he would rather not restrict the Barone's to specific days due to the potential for loss of event bookings.

Commissioner Narum accepted the six days a week as a compromise. She asked that Barone's be open also six days a week at 6:00 a.m.

Commissioner Blank confirmed that the six days a week would apply to music as well as early morning openings. He asked if staff can craft language for the revised and new conditions.

Ms. Decker said staff could do it.

Commissioner Narum stated that she believed the day before Thanksgiving was for family time and that it was unreasonable to allow them to stay open until 1:00 a.m. She asked that "the Wednesday before Thanksgiving" be stricken from Condition No. 2 and allow them to be open until 10:00 p.m.

Commissioner Pentin inquired why staff had listed dates.

Mr. Otto replied that this was the same as the condition for Redcoats.

Chair Pearce stated that she was not inclined to change it if Redcoats has the same condition.

Commissioner Blank agreed.

Chair Pearce asked Commissioner Blank to explain why he is proposing going from seven days to six days a week even though the applicants have indicated they were not inclined to open seven days a week but just wanted the flexibility. She noted that this would restrict them should they could have four bookings one week and then seven requests the next.

Commissioner Blank replied that he was trying to arrive at a compromise as the Barone's indicated they had no intention of having events seven days a week. He added that he hopes the Barones run into that situation a lot because that would be good for business. He encouraged them to return to the Commission if that does happen.

Commissioner Pentin proposed that the Commission condition that the Director of Community Development be able to make the change from six to seven days if the business becomes successful.

Commissioner Narum stated that she would normally be fine with that, but that given all of the speakers and emails and in fairness to the public, she believes it should be a noticed meeting for the residents' benefit.

Chair Pearce asked Commissioner Blank if he wanted to give residents one night of non-amplified music as a compromise.

Commissioner Blank replied that he wanted to limit the number of days, and six was a compromise between the seven the Barones wanted and Commissioner Narum's proposed five.

Commissioner Narum stated that it was reasonable to allow the neighbors at least one night with no music.

Chair Pearce advised the Barones that they can return for a modification of the CUP if they later wanted seven days.

Commissioner Blank stated he did not have an issue with music going until 10:00 p.m. He indicated that he felt the Downtown should be able to have some amount of night life.

Commissioner Pearce advised the Commissioners that she wanted to re-open the public hearing to find out how the Barones felt about the new conditions.

THE PUBLIC HEARING WAS RE-OPENED.

Mr. Barone indicated that he agreed with the added and revised conditions and suggested that if the Martinovich family comes in for an application, The Farmers Restaurant be conditioned with the same one quiet night a week. He also requested that the Commission consider how the noise would be monitored if both businesses that share the same property line are open on the same evening.

Mr. MacDonald stated that he agreed with the proposed motion.

THE PUBLIC HEARING WAS CLOSED.

Chair Pearce stated that neighbor issues are one of the hardest things the Commission has to work with. She noted that the Commission cannot make everyone happy and hoped that the compromise arrived at makes everyone a little bit happy. She indicated that if the process does not work, the matter can come back to the Commission for discussion. She added that she was happy to see something to enliven the Downtown.

ROLL CALL VOTE:

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

Resolution No. PC-2009-26 approving PCUP-249 was entered and adopted as motioned.

**b. PRZ-41, City of Pleasanton
Review and consideration of amendments to Chapter 18.68 and various related sections of the Pleasanton Municipal Code regarding the PUD Planned Unit Development District.**

Donna Decker presented the staff report, explaining that the amendments area a text clean-up to clarify the planning process for developed properties that pre-existed as PUD rezones, allow design review rather than PUD modifications, and delete the definition for interim uses. The amendment would also allow Tentative Map applications to be submitted and processed concurrently with PUD applications.

Ms. Decker noted that she received a call from a Ponderosa Homes representative, stating that Submittal Requirement No. 8 under Chapter 18.68 regarding tree report submittal is covered under Submittal Requirement No. 5 and requested that this be struck.

With respect to the design review process, Ms. Decker displayed an exhibit and explained that the amendment will clarify and acknowledge that a single-family residence is not an interim use.

As regards the concurrent submittal of PUDs and Tentative Maps, Ms. Decker stated that both applications would be reviewed and processed through the Planning Commission, then go forward to the City Council for approval. Ms. Decker noted that the Tentative Map would include a condition that approval would be contingent on PUD approval at the second reading by the Council. She added that there would be a risk the developer takes upon concurrent submittal because any changes to the PUD development plan recommended by the Planning Commission and/or the Council that are not reflected in the Tentative Map would require the developer to provide such changes and revisions to the Map to the satisfaction of the City Engineer.

Using the Ponderosa Ironwood development as an example, Commissioner Narum recalled that the Planning Commission recommended approval of the PUD but required the applicant to incorporate changes in the Tentative Map, such as installing sidewalks and providing access to trails. She indicated that she wanted to ensure that the developers understand that if they submit their PUD and Tentative Map applications concurrently, they will be obligated to incorporate any changes to the Tentative conditioned by the Commission.

Commissioner Blank stated that the Commission can include a condition that approval of the PUD is recommended but the Tentative Map must be changed.

Commissioner Narum stated that she wants the developers to understand that if they choose that path, it would be at their own risk. She expressed concern that a developer may come in with both applications and there is some amount of pressure to approve both.

Commissioner Blank explained that the Commission still has the ability to recommend changes to the PUD development plan.

Chair Pearce concurred.

Commissioner Blank inquired if developers would now be required to submit both applications at the same time.

Ms. Decker said no.

Commissioner Pentin questioned the use of "shall" and "may."

Commissioner Narum reiterated that developers who choose to go that route need to clearly understand there is a risk that they may have to redo the tentative map which can be a significant expense.

Chair Pearce stated that staff could walk the applicants through the process.

Ms. Decker added that staff can also include in the process an acknowledgement that the developers can sign stating that they are aware of the risk and that if there are changes to the PUD development plan, they will need to modify their Tentative Map and other documents accordingly to match the approval of the PUD development plan.

**Commissioners Blank moved to find that the adoption of proposed amendments to the Municipal Code are statutorily exempt from the California Environmental Quality Act and to recommend approval to the City Council of PRZ-41 as shown in Exhibits A and B, with a condition that the developers sign an acknowledgement that they will have to make any changes to their Tentative Plans if there are revisions to the PUD development plan at the time of City Council approval.
Commissioner Narum seconded the motion.**

ROLL CALL VOTE:

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

Resolution No. PC-2009-27 recommending approval of PRZ-41 was entered and adopted as motioned.

7. MATTERS INITIATED BY COMMISSION MEMBERS

No discussion was held or action taken.

8. MATTERS FOR COMMISSION'S REVIEW/ACTION

a. Future Planning Calendar

No discussion was held or action taken.

b. Actions of the City Council

No discussion was held or action taken.

c. Actions of the Zoning Administrator

No discussion was held or action taken.

9. COMMUNICATIONS

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 10:08 p.m.

Respectfully,

DONNA DECKER
Secretary