



## PLANNING COMMISSION MINUTES

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

**APPROVED**

**Wednesday, February 11, 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 February 11, 2009, was called to order at 7:00 p.m. by Chair Pearce.

#### **1. ROLL CALL**

Staff Members Present: Brian Dolan, Director of Planning and Community Development; Donna Decker, Principal Planner, Jenny Soo, Associate Planner; and Maria L. Hoey, Recording Secretary

Commissioners Present: Chair Jennifer Pearce, Vice Chair Arne Olson; Commissioners Phil Blank, Anne Fox, Kathy Narum, and Greg O'Connor

Commissioners Absent: None

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

##### **a. January 14, 2009**

Commissioner Olson noted a typographical error in the first sentence of the last paragraph on page 23 and requested that "124" be changed to "1.24".

Commissioner O'Connor stated that with respect to the "ROLL CALL VOTE" on page 15, he did not vote as he was an Alternate. He requested that the vote be modified to reflect a 4-1 vote.

Commissioner O'Connor requested that the third and fourth sentences of the fourth paragraph on page 22 be modified to read as follows: "He added that the other parcels ~~have less open space, but they have also left other open space~~ might be under one acre. He stated that the Serenity Terrace project has 12 lots, but it has much more than 24 acres, ~~leaving a lot more acreage~~ thereby developing less than one house per two acres."

Commissioner O'Connor noted that the statement just before the motion for Item 8.d., Appointment of Two Commissioners to the Heritage Tree Board, on page 34 was made by Commissioner Olson and requested that it be modified as follows: "~~Commissioner O'Connor~~ Commissioner Olson confirmed they have held one meeting."

Chair Pearce requested that the first sentence of the last paragraph on page 25 be modified to read as follows: "...however, ~~she did not think~~ thought the atmosphere was no longer rural."

**Commissioner Blank moved to approve the January 13, 2009 minutes, as amended.**

**Commissioner Narum seconded the motion.**

**ROLL CALL VOTE:**

**AYES: Commissioners Blank, Fox, Narum, Olson, and Pearce.**

**NOES: None.**

**ABSTAIN: None.**

**RECUSED: None.**

**ABSENT: None.**

b. January 28, 2009

Commissioner Fox stated that the Commissioners discussed PRZ-38 and PRZ-25 as well as one that was previously adopted and identified as PRZ-37. She requested that the first sentence of the eighth paragraph on page 8 be modified to read as follows: "...to look at reversing PRZ-37 as part of PRZ-25, even though it was off the list."

Commissioner O'Connor requested that the sentence in the fourth full paragraph on page 3 be modified to read as follows: "Commissioner O'Connor suggested that if the Commission ~~put as~~ eliminate from its top three priorities those items that already have steam behind them."

Chair Pearce stated that she was not present at the meeting and suggested that the Adjournment sentence on page 10 be changed to read as follows: "~~Chair Blank~~ Acting Chair Olson."

Commissioner Blank moved to approve the January 28, 2009 minutes, as amended.  
Commissioner Olson seconded the motion.

**ROLL CALL VOTE:**

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

**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 speakers.

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

**5. CONSENT CALENDAR**

**6. PUBLIC HEARINGS AND OTHER MATTERS**

**a. PAP-130, Anne Fox, Appellant (PDRW-13, Katie Belmonte/Complete Wireless Consulting, Applicant)**

**Appeal of the Zoning Administrator's approval of a design review to install a wireless communication facility that includes rooftop equipment with screening and three building-mounted antennas at 7050 Johnson Drive.**

Ms. Soo presented the staff report and described the scope, layout, and key elements of the project.

Commissioner Blank referred to the circle on the radius map and inquired if it was measured from the property line or from the edge of the Hilton Hotel or from where the antennas would be located. Ms. Soo replied that it was measured from the property line.

Commissioner Blank noted that the map appears to show that the edge of the 300-foot radius extends to the church. Mr. Dolan clarified that it did not fall within the 300-foot radius area.

Chair Pearce posed a procedural question, stating that she does not recall having a full Commission discuss an item that was appealed by one of the Commissioners.

She inquired whether Commissioner Fox, as appellant, would need to recuse herself and have Commissioner O'Connor take her place at the dais.

Commissioner Fox indicated that she had referred the matter to staff earlier and that City Attorney Michael Roush had confirmed that she could participate in the discussion and vote.

Mr. Dolan stated that he and Ms. Decker had met earlier with the City Attorney, Michael Roush, who indicated that Commissioner Fox could participate in the discussion and could address the Commission either from her seat or from the podium. Ms. Seto added that when this occurs, Commissioner Fox would also have the opportunity to address the Commission and raise issues as part of the Commission's discussion.

Chair Pearce inquired if Commissioner Fox would be able to ask questions of staff. Ms. Seto replied that she could.

Commissioner Blank inquired how long the existing Hilton Hotel antennas have been in place. Ms. Decker replied that the first application was approved in 1999 and the second in 2005; after the ordinance had been adopted.

Commissioner Fox noted that on page 5 of the staff report, it states that the City's Building and Safety Division issued a certificate of occupancy for a "Childcare Center." She inquired why the City believes this is not a childcare center when the Division issued a certificate of occupancy for such, and the applicant, Club Sport, has indicated having a childcare center on site.

Commissioner Blank noted that the staff report also states that this terminology was unrelated to the licensure or requirements of the State.

Commissioner Fox stated that the City's wireless ordinance does not address whether or not the facility is licensed but simply uses the word, "childcare center."

Mr. Dolan explained that this is exactly what staff has indicated in the report, the terminology used by the Chief Building Official to describe the activity at the facility as he viewed it. He noted that it was a generic term for that specific facility wherein a drop-in service to watch their children was provided to parents while they work-out.

Commissioner Fox noted that Attachment D of the staff report, a licensing exemption letter, states: "...a visit to your site during which I made the determination that Club Sport was providing child care in violation of the law." It goes on to say: "...she called you and explained to you how you might become exempt. You agreed to the conditions she presented as follows: (1) Camp: camp will be held for no more than 12 weeks in a calendar year and will serve children who are not younger than 4 years, 9 months; and (2) Time limits: children who are in care when their parents are not on site are limited to four hours or less per week." She inquired if it was

planning staff's understanding that Club Sport is adhering to the time limit of parents or of having their children on site for four hours or less per week when they are not there.

Ms. Seto replied that staff reviewed the exemption letter and sees Conditions 1 and 2 as being read separately. She indicated that obviously, the discussion about a camp would necessarily have the parents away from the children for the hours that have been described. She added that the Commission has the option, after considering this particular application, to direct staff to work with Club Sport to seek clarification about its status with regard to this letter. She noted that at this point, staff sees it as being quite unrelated to the current proposal.

Commissioner Fox stated that with respect to the issue of whether or not Club Sport is a childcare facility with respect to the time limit of four hours or less per week when parents are not on site, Club Sport's website says that "it provides child care per day and children from 6 weeks to 12 years old can receive three hours of child care per day." She noted that the three hours per day plus the four hours or less per week enable parents to leave their children at Club Sport for a total of 21 hours per week.

Chair Pearce suggested that the Commissioners limit their inquiries at this point to clarifying questions.

Commissioner Blank stated that he believed the text is difficult to read without reading the entire context: "All Club Sport Pleasanton family members receive three hours of complimentary child care per day, which allows parents plenty of time to work out, enjoy lunch, or receive spa treatment or anything else we have to offer." He noted that this implies that the parents are on-site.

Ms. Seto stated that Club Sport regulations for the Kids Camp does require that the parent stay on site; so to that extent, parents can use those three hours a day provided they are on-site. She added that Condition 2 talks about when parents are not on site. She noted that staff does not see those as in conflict with each other.

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

Commissioner Fox referred to Attachment B of the staff report for the wireless ordinance, distributed earlier, which was adopted in 1998. She noted there was a wireless communication facilities group that was put together as a two-year committee, which developed a draft ordinance that went through the Planning Commission and City Council. She stated that page 5 of that staff report for the ordinance states that a wireless facility would not be allowed within 300 feet of a residences, public parks, public schools, private schools, childcare centers, or senior care assisted-living facilities. She added that on page 6, the ordinance outlines some of the reasons why this was put in place, with property values being one of the main drivers; and page 7 talks about some of the issues regarding commercial uses

in residential districts. She continued that page 8 goes through some issues regarding noise and public parks, page 9 addresses public and private schools as well as childcare centers, and page 10 refers to senior care and assisted-living facilities. She noted that the wireless ordinance was first addressed when a wireless antenna was put in McKinley Park.

Commissioner Fox stated that at the time the ordinance was being considered, prior to the opening of Club Sport, the actual childcare center language that was in the ordinance did not talk about whether or not it was licensed; it simply used the word, "childcare center." She noted that the Gingerbread Preschool, although not a licensed childcare center, is a childcare center which is exempted because it is a public recreation facility.

Commissioner Narum noted that the ordinance was written in 1998, and the letter about Club Sport was in 1997. She inquired whether Club Sport already provided childcare when the ordinance was written. Commissioner Fox stated that this was possible but that she was not sure and that staff would have to clarify that. Commissioner Olson stated that he believed it was before the first wireless antennas went up on the roof in 1999.

Commissioner Narum noted that the letter indicates a visit was "made to your site during which I made the determination that Club Sport was providing child care in violation of the law," which means that they were already there. She noted that Commissioner Fox had made a statement that this was written before Club Sport was having child care, but the dates do not match. Commissioner Fox stated that Club Sport may have been providing child care before the wireless ordinance. She added that said she was not sure what was in effect prior to the particular version of the wireless ordinance.

Commissioner Blank inquired if Commissioner Fox had the actual wireless communications ordinance or provisions of the Code for that particular reference. Ms. Seto distributed the Code section pertaining to the 300-foot radius area.

Commissioner Fox stated that the Club Sport website states that "Kids World keeps children from 6 weeks to 12 years old safe, happy, and active while you are on-site, families receive three hours of complimentary child care per day," and then goes on to talk about other things. She noted that the exemption letter Club Sport received on October 15, 1997 states that the time limit was for an individual child to be left in childcare for four hours or less per week. She added that Club Sport has spring break for 5-12-year-olds, with camp hours from 9:00 a.m. to 4:00 p.m. and extended care from 8:00 a.m. to 6:00 p.m., and summer camps also between 9:00 a.m. to 4:00 p.m. and extended care between 8:00 a.m. and 6:00 p.m..

Commissioner Fox explained that the reason she brought this to the Commission is because the wireless ordinance does not address whether the childcare facility does, in fact, need to be licensed or not; it simply uses the phrase, "childcare

center.” She stated that she felt it was important that this comes before the Commission because she believes that Club Sport states it is offering a childcare center and that it is within the 300-foot radius as outlined in the ordinance.

Commissioner Blank told Commissioner Fox that she continues to state, “the letter says children are limited to four hours or less per week” but continues to leave out the phrase, “when their parents are not on site.” He asked Commissioner Fox if she agreed that the reference was for four hours per week only when parents are not on site. Commissioner Fox inquired what “on-site” means. Commissioner Blank replied that he felt children who are in childcare when parents are not on-site are limited to four hours or less per week. He added that in the materials Commissioner Fox brought, all Club Sport states is that it provides three hours a day only when parents are at the club. He noted that it appears to him that paragraph 2 does not apply in that context because parents are on-site.

Commissioner Fox stated that the first paragraph of the October 18, 1999 letter reads: “In your letter, you state that you understand that children are limited to staying on your premises for 4 hours a week without their parents. This is correct as an interpretation of our Child Care Center Regulation, Section 101158(a)(10), in which you are permitted to having an exempt child day care program as long as it operates only one day per week for no more than 4 hours on that one day.” Commissioner Blank noted this is the four hours that parents can be off-site.

Commissioner Fox stated, however, that all of the letters the City receives from various community care licensing representatives talk about 16 hours.

Commissioner Blank suggested that the Commission only deal with the information the City has on the public record of the case.

Commissioner Fox noted that her basic point is that Club Sport indicates it is a childcare center and it lists on its website that it has a childcare facility.

Commissioner Blank stated that he is looking at how Club Sport represents itself from the materials Commissioner Fox has presented to the Commission and noted that Club Sport only indicates that it provides three hours of complimentary child care.

Commissioner Fox noted that the tenant improvement plan broadly referred the play area as the childcare center, and it references this on page 5 of the staff report.

Commissioner Blank inquired what language should otherwise be used in areas where children can stay in for three hours, suggesting “childcare gathering place”. Commissioner Fox noted that she is only trying to indicate that the City’s ordinance says “childcare center.”

Commissioner Olson stated that Club Sport is a health club and the fact that it provides child care is incidental to what it really does.

Commissioner Narum inquired if the appeal is based on Club Sport having a day care operation within 300-feet of where the tower would be located. Commissioner Fox replied that was correct and that Club Sport calls it a childcare center. She noted that the ordinance includes restrictions for a childcare center without any parameters regarding whether or not parents are there or whether or not the facility is licensed.

Kate Belmonte, Verizon Wireless, stated that they have worked diligently to choose a wireless location that meets the parameters of the City's wireless ordinance. She explained that they are proposing an equipment design which will match and harmonize with those of the existing carriers already on site for the reasons discussed by the Planning staff, and they believe their site clearly meets the location standards for being more than 300 feet from a childcare facility. She stated that the issues as to why the 300-foot limit was put into place cites property values, visual, safety, security issues, and noise. She noted that the wireless facilities have been there since 1999, and none of those issues have arisen during that ten-year period. She also said Verizon agrees to all the Conditions of Approval and requested the Commission to support the project.

Commissioner Fox stated that said she had no rebuttal.

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

Chair Pearce recommended denying the appeal thereby upholding the Zoning Administrator's approval of PDRW-13. He stated that he was trying to be sensitive about the childcare issues as well as issues of property values, noise, and others in the ordinance; however, there have been antennas on-site since 1999, and more were approved in 2005. He noted that the way Club Sport operates is no different today than it was in 2005 or in 1999; hence, he believes it is not appropriate to suddenly impose restrictions. As an example, he stated that if a gas station were to set up a play area on-site and call it childcare where kids could go in and play with toys while their parents are filling up their tanks, he did not believe that would be a true childcare center. He indicated that he felt there should be a point to apply common sense and that he did not feel comfortable closing down something that has already been in existence.

Commissioner O'Connor added that he certainly thinks the Commission could make a distinction between a gas station where somebody might be for 15 minutes versus a facility where somebody has 21 hours of available child care. Commissioner Blank agreed. Commissioner O'Connor added that one of the points he would make is that if the appeal were to be denied, some clarification would be needed in the language of the ordinance. He noted that it was clear to him that in this case, this is childcare, and the ordinance is not clear about licensed versus unlicensed childcare.



He stated that at some point, the ordinance should be clarified with respect to what exactly is its intent because he thinks a child could be in the center more than 16 hours a week that State Licensing would require; although if people were on-site, it would be an exemption. He added that the fact remains, however, that the children are there for more than 16 hours a week.

Commissioner Fox said she would not support the motion because she felt that as Commissioners, they need to look at the ordinance, and if there is a problem, matters should be deferred and then have the City Council direct staff to revise and clarify the ordinance. She indicated that she did not feel comfortable putting in a wireless antenna within 300 feet of a childcare center when the ordinance was adopted unanimously by the Council in 1998 to adopt the 300-foot buffer.

Commissioner Narum agreed with Commissioner Blank's statements. She noted that a better example would be the Burger King or McDonald's play areas and did not want to call those daycare centers. She stated that said she was also struggling, should the Commission vote to uphold the appeal, whether or not this meant the Commission would revoke the ability for the other two carriers. She agreed that Commissioner Fox has brought up interesting questions on the ordinance that beg review, but she did not see how the City can deny putting a tower on the building when there are already some on there and there have been no complaints.

Commissioner Blank agreed that the ordinance needs clarification, but added that he did not believe going to a place to work out three times a week and dropping the kids off a couple of hours each time was the intent of the crafters of the ordinance to make this a "childcare facility."

Commissioner O'Connor asked the Commission to keep in mind that public parks are also places the City wants to keep wireless facilities 300 feet from, but this does not mean any one specific child is going to necessarily be in that park for more than 16 hours a week.

Commissioner Blank stated that the public park relationship is due to maintenance, property values, and impact on the environment and those things are not in play when one is inside a facility like Club Sport.

With reference to whether or not the other two facilities would be revoked, Commissioner O'Connor stated that he would assume they would not, but the permit of one would be up in 2009 and the other in 2010, at which times the City would have the ability to not approve an extension. Commissioner Blank reiterated that there have been no complaints regarding these wireless facilities.

Commissioner Fox felt this was different than a McDonald's play land in that this is a facility where people can take their 6-week to 12-year-old, check them in, and have people take care of the children, and also a facility where you can have children anywhere from 9:00 a.m. to 4:00 p.m. for extended periods of time, including the

entire summer. She indicated that to her, this is clearly a childcare center. She added that essentially parents are not on-site for the summer camp sessions that start at 9:00 a.m. and end at 4:00 p.m. She noted that the Commission can choose to approve this, knowing that it is within 300 feet of a childcare center, but that she would not vote for the motion.

Commissioner Olson inquired whether the antennas were unidirectional, and if so, which direction they were pointing to. He added that he did not understand the danger to children.

Ms. Belmonte referred to the letter the attorney for Verizon sent the Commission where he discussed how jurisdictions cannot regulate based off of radio frequency emissions and this would be the concern as far as distance from the antennas. She added that as part of the application process, the applicant had to do a radio and frequency report which indicates that the facility is well below the Federal Communication Commission's (FCC) limits. She noted that the antennas are pointed in three different directions and referred to an overhead copy of the coverage map that shows when they are emitting and what the coverage area is. She added that the main goal is to cover the I-580 interchange.

Commissioner Olson noted that he did not see any residences around the area and that there is much more noise from the freeway than from the antennas.

Commissioner O'Connor stated that on page 9 of Attachment B of the wireless ordinance staff report, a perception of whether or not there will be danger to kids is not the issue but could be the issue for parents who would be bringing a child to the facility if they perceived that it could cause danger. He noted that the parents could choose not to bring their children to the facility, and this is where property values are brought up. He added that he felt this is not really about whether or not there is a danger to a child.

Commissioner Blank believed that a review of the maps show that most of the additional coverage would be in Dublin and would frankly cover many Dublin residential areas.

Chair Pearce agreed that there needs to be clarification. She stated that she thought that childcare was not as controversial or as well discussed in 1998 as it is now, and she added that she felt more clarification could be provided in the ordinance. She noted that she can only agree with what Commissioners Blank, Olson, and Narum have said that this is not about danger to kids but about noise and many things where no complaints have arisen. She indicated that there are two existing facilities there and that she was not inclined to create new ramifications for a new facility that is not proposing anything different. She reiterated, however, that she does believe this warrants additional discussion for a later date.

**Commissioner Blank moved to deny the appeal thereby upholding the Zoning Administrator's Approval of Case PDRW-13.**

**Vice Chair Olson seconded the motion.**

**ROLL CALL VOTE:**

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

**NOES: Commissioner Fox.**

**ABSTAIN: None.**

**RECUSED: None.**

**ABSENT: None.**

**7. MATTERS INITIATED BY COMMISSION MEMBERS**

West Angela Street and Peters Avenue Project

Commissioner Narum inquired about the status of the Michael Carey project on the corner of West Angela Street and Peters Avenue, which was approved approximately two years ago. Commissioner O'Connor recalled that three homes were to be built on that site. Commissioner Olson noted that it could be an issue of financing.

Ms. Decker clarified the project is in the Building plan check process. She added that staff would provide an update.

Lucky's Shopping Center on Hopyard Road

Commissioner Fox referred to the Lucky's Shopping Center on Hopyard Road where there are political signs stapled on the lamp posts. She requested staff to have Code Enforcement review the issue.

Comerica Bank on Main Street

Commissioner O'Connor inquired when Comerica Bank would be opening Downtown. He noted that when the applicants were last before the Planning Commission, they indicated they were going to open at the end of 2008. Commissioner Olson stated that they would probably open around June or July, and would definitely open this year.

**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. Consideration of the Planning Commission Meeting Schedule for 2009

Ms. Decker noted the Commission should vote on the revised calendar and that staff is also requesting consideration to move the April 8<sup>th</sup> meeting to April 15<sup>th</sup> and the April 22<sup>nd</sup> meeting to April 29<sup>th</sup>.

Commissioner Fox noted that the City Council has only one meeting in June and July and the Planning Commission has two meetings.

**Commissioner Narum moved to approve the revised Planning Commission Meeting Schedule for 2009.**

**Commissioner Blank seconded the motion.**

**ROLL CALL VOTE:**

**AYES: Commissioners Blank, Fox, Narum, Olson, and Pearce.**

**NOES: None.**

**ABSTAIN: None.**

**RECUSED: None.**

**ABSENT: None.**

**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

No discussion was held or action taken.

## **12. ADJOURNMENT**

Chair Pearce adjourned the Planning Commission meeting at 7:55 p.m.

Respectfully,

DONNA DECKER  
Secretary