



PLANNING COMMISSION MINUTES

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

APPROVED

Wednesday, July 23, 2008

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

CALL TO ORDER

The Planning Commission meeting of July 23, 2008, was called to order at 7:00 p.m. by Chair Blank.

1. ROLL CALL

Staff Members Present: Brian Dolan, Director of Planning and Community Development; Donna Decker, Principal Planner; Julie Harryman, Assistant City Attorney; Wes Jost, Development Services Manager; Rosalind Rondash, Assistant Planner; and Maria L. Hoey, Recording Secretary

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

Commissioners Absent: None.

2. APPROVAL OF MINUTES

a. June 25, 2008

Commissioner O'Connor noted that Commissioner Narum's name should be added to the vote on page 4.

Commissioner Narum requested that the first sentence of the third paragraph on page 12 be modified to read as follows: "Commissioner Narum inquired whether the design review extension ~~had been~~ could be appealed by the Planning Commission."

Chair Blank referred to the fourth paragraph on page 6 and inquired if it was staff and not Commissioner Fox who responded to his inquiry. Commissioner Fox noted that it was she who responded.

Commissioner Pearce moved to approve the minutes of June 25, 2008, as amended. Commissioner Olson seconded the motion.

ROLL CALL VOTE:

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

NOES: None.

ABSTAIN: None.

RECUSED: None.

ABSENT: None.

The motion passed, and the Minutes of June 25, 2008 were approved as amended.

b. July 9, 2008.

Commissioner Fox requested that point no. 4 of her reasons for not supporting the project, as shown on page 23, be modified to read as follows: "She believes the project is too dense, specifically Lots 21, 63 and 70, some of which are bordered by multiple lots in ~~the~~ their rear and side yards."

Commissioner Fox further requested that the following sentence be added at the beginning of point no. 5: "She believes there will be extensive noise from the City's Operations Service Center (OSC) and is concerned with lots bordering the OSC."

Chair Blank noted that he had disclosed that he knew Sherryl Dennis and requested that the following sentence be added before the third full paragraph on page 18: "Chair Blank disclosed that he knew Sherryl Dennis socially but that they had not discussed the item she was providing public testimony on."

Commissioner Narum noted that the height limit of the building stated in the first sentence of the second paragraph on page 5 should be 27 feet instead of 26.

Commissioner Narum noted a typographical error in the fourth sentence of the last paragraph on page 14 and requested that the word "He" be replaced by "She" in reference to Ms. Pamela Hardy.

Commissioner Narum requested that the following sentence be added before the first paragraph following the title "The Public Hearing Was Closed" on page 20: "Chair Blank asked if there was money available for the mitigation."

Commissioner Narum requested that the last sentence of the second paragraph on page 16 be modified to read as follows: "Ms. Hardy stated that Ponderosa's marketing analysis shows that people want to sell their much larger 4,000-square-foot home and move down to a smaller, approximately ~~4,000~~ 2,000-square-foot home with an available room for visiting family members." She also asked staff to check the tape to identify her discussion about the 2,900-square-foot house and the fact that a family could live on an entire second floor.

Commissioner Narum moved to approve the minutes of July 9, 2008, as amended. Commissioner Olson seconded the motion.

ROLL CALL VOTE:

AYES: Commissioners Blank, Fox, Narum, and Olson.
NOES: None.
ABSTAIN: Commissioner Pearce.
RECUSED: None.
ABSENT: None.

The motion passed, and the minutes of the July 9, 2008 meeting were approved as amended.

3. MEETING OPEN FOR ANY MEMBER OF THE AUDIENCE TO ADDRESS THE PLANNING COMMISSION ON ANY ITEM WHICH IS NOT ALREADY ON THE AGENDA.

Doug Farmer requested the Commission to discuss and address RV parking issues. Chair Blank advised that the Commissioners could bring the item up under Matters Initiated by Commission Members and could pose the question to staff.

Commissioner Fox inquired if Matters Initiated by Commission Members could be moved ahead, and Chair Blank suggested that the issue be addressed under Revisions and Omissions to the Agenda.

Commissioner O'Connor stated that he understood the Commission could not discuss items brought forth by the public but that staff could answer questions. Julie Harryman clarified that staff can answer brief comments but that because the item is not agendaized, the Commission could not engage in a lengthy discussion.

Donna Decker explained that staff continues to look at various ordinance amendments requested and that staff was still gathering information and looking citywide in terms of where the issues are predominant, after which staff can go in

the direction of what standards should apply citywide. She noted that the topic is sensitive, as many people store their RV's in side yard areas. She added that it appears to be a slow process due to the large number of criteria to review.

4. REVISIONS AND OMISSIONS TO THE AGENDA

Donna Decker reported Item 5.c., PRZ-41, City of Pleasanton, the review and consideration of amendments to various sections of Chapter 18 of the Pleasanton Municipal Code, has been continued to a future date. She advised that Commissioner Fox had requested that Item 5.d., PRZ-42, City of Pleasanton, the pre-zoning for the annexation of the Martin Avenue buffer zone, be pulled from the Consent Calendar and considered Public Hearings and Other Matters. She noted that the Commission typically takes items pulled off of the Consent Calendar as the first item under Public Hearing and Other Matters but that the Commission has the discretion to make that decision.

Chair Blank suggested that the Commission consider if there were any issues regarding the two remaining Consent Calendar items, Item 5.a., PCUP-227, Gabriel Arechaederra/HFC Pleasanton, LLC, and Item 5.b., PDR-772, Paul Larson, so that if there were no questions, the Commission could move ahead and take a vote on these items. He noted that he had not received any speaker cards on the two items.

Commissioner Fox indicated that she had some questions regarding Item 5.a.

5. CONSENT CALENDAR

a. PCUP-227, Gabriel Arechaederra, HFC Pleasanton, LLC

Application for a conditional use permit to operate a fitness facility at 4770 Willow Road. Zoning for the property is PUD-I/C-O (Planned Unit Development – Industrial/ Commercial-Office) District.

Commissioner Fox inquired whether a condition was needed stating that parents are required to remain on-site while their children are at the Kid's Club facility, or if staff was comfortable as the condition currently reads.

Ms. Decker replied that the Kid's Club is for those who use the facility and, therefore, staff did not believe it was necessary to place this as a condition of approval since the use of the facility is limited to members of the facility. She noted that 24 Hour Fitness will not accept non-club members and that parents are not able to drop-off their kids and leave the site.

- b. **PDR-772, Paul Larson, Vision West Development, LLC**
Application for design review approval to construct two, two-story buildings, measuring 18,855 square feet and 15,128 square feet, on an approximately 85,813-square-foot site located at the end of Boulder Court (Lot 3, PM 9014). Zoning for the property is I-G-40,000 (General Industrial) District.

Commissioner Pearce moved to make the required conditional use permit findings for PCUP-227, as stated in the staff report, and to approve PCUP-227 and PDR-772, subject to the conditions of approval as listed in Exhibit B of the staff reports.

Commissioner Narum seconded the motion.

ROLL CALL VOTE:

AYES: Commissioners Blank, Fox, Narum, Olson, and Pearce.
NOES: None.
ABSTAIN: None.
RECUSED: None.
ABSENT: None.

Resolutions Nos. PC-2008-37 approving PCUP-227 and PC-2008-38 approving PDR-772 were entered and adopted as motioned.

- c. **PRZ-41, City of Pleasanton**
Review and consideration of amendments to various sections of Chapter 18 of the Pleasanton Municipal Code.

This item was continued to a future meeting

Chair Blank then surveyed the audience to determine the number of speakers for each of the two public hearing items in order to decide which item to hear first. The Commission then agreed that Item 6.a. would be heard first.

6. PUBLIC HEARINGS AND OTHER MATTERS

- a. **PUD-72, Jerome and Laura Raney**
Application for Planned Unit Development rezoning of two parcels totaling approximately .51 acres from the RM-1,500 (Multiple-Family Residential) District to the PUD-HDR (Planned Unit Development – High Density Residential) District and development plan approval to construct three new residences at 4715 and 4693 Augustine Street.

Rosalind Rondash presented the staff report and described the background, scope, key components, and layout of the project. She noted that staff had presented a memo to the Commission regarding a new condition that would

address cost analysis for restoration versus new construction in order to maintain the historical ties of the existing structure.

Commissioner Narum noted that she had read the staff report and that with respect to noise, her interpretation was that all of the items listed needed to be done in order to achieve the required decibel ratings the General Plan specifies. She requested clarification regarding whether the City is doing what it needs to in order for noise to be within the required guidelines.

Chair Blank noted that he had a difficult time finding the noise conditions, and Commissioner Narum identified it as Condition No. 21. Chair Blank noted that the condition did not appear to be the standard condition of approval that is used and would like it changed to reflect that.

Ms. Decker stated that noise analyses generally have recommendations as described. She added that windows need an STC rate upwards of 40+ ratings, which would result in a very wide-framed window which is unattractive and does not meet the City's design guidelines. She explained that noise mitigation can also be attained through other methods such as wall construction, increased insulation, sound attenuation, etc. She noted that the noise study is part of Exhibit A under Condition No. 1. She added that staff wanted flexibility so as not to have huge, wide windows that prohibit recessed window entries.

Commissioner Narum inquired how staff would know which combination will achieve the decibel level if it is different than what is being recommended. Chair Blank inquired why a noise study would be needed if its recommendations would not necessarily be followed.

Ms. Decker replied that staff refers back to the noise consultant and verifies conditions to satisfy the requirement.

Chair Blank inquired if the condition of approval could be subject to the recommendations of the noise consultant. Ms. Decker recommended that the condition be based on staff's consultation with the noise analyst and subject to the review and approval of the Director of Planning and Community Development. Chair Blank acknowledged the Director's expertise but felt that the condition of approval should include the noise analyst's approval.

Commissioner Narum indicated that she would like the noise consultant to review the condition and provide comments. Chair Blank noted that this was all right as long as it can be met.

Ms. Decker noted that noise analysts look at the project in a linear manner and do not consider other construction methodologies that can acquire the same result. She added that they do not consider increased and noise attenuation materials, such as, for example, the larger windows and unattractive elevations

which were proposed for the Kimberly Commons project. She noted that in that case, the analyst re-evaluated the mitigations and found that other measures met the noise analysis. She indicated, however, that the Commission can require that the conditions of approval incorporate the recommendations of the noise analysis and not allow this flexibility.

Commissioner Pearce inquired if the maximum dBA could be included or outlined in the noise study and plotted into the conditions of approval to achieve flexibility. Ms. Decker explained that both the Zoning Code and the General Plan require the dBA rating for internal noise and how it is abated. She added that staff believes that there may be other construction alternatives versus relying on window ratings.

Commissioner Olson noted that the third sentence of Condition No. 5 on page 1 should be corrected to read: "The Director of Planning and Community Development may approve earlier 'start times'...." Referring to Condition No. 23, he inquired if the required certified green home rating was 50 points. Ms. Rondash said yes. He then noted that the Pleasanton Heritage Association suggested that garages be constructed instead of carports and that the staff report indicated that parking spaces are not to be used for storage. He inquired if that was the reason for carports.

Ms. Rondash replied that the condition of approval is a standard condition and addresses storage in both garages and carports. She explained that the carport design evolved in response to providing on-site parking for existing homes and the Downtown Design Guidelines provision that garages be placed at the rear of the property so they do not become the focal point. She noted that given the constraints of the homes and their placement on lots, it was a challenge to provide covered parking without making it a focal point. She added that various designs were reviewed with the applicant, resulting in the flat-roof design of an open carport, a subdued look to a required covered parking space.

Chair Blank inquired if the 50 dBA for trains included the whistle blows. Ms. Rondash said yes.

Commissioner Fox referred to storage for garages in the Downtown areas where nothing is allowed except for automobile storage. She noted that Condition No. 22 relates to RV's and trailers and inquired which conditions required that carports only be used for storage of an automobile and not other materials. Commissioner Narum noted that this was found in Condition No. 16.

Commissioner Fox inquired if the addition of the word "carport" to this condition would address the Pleasanton Heritage Association's comment. Ms. Rondash replied that the condition could be reworded to indicate that all carports and garages shall be free of storage and available for parking at all times."

Commissioner Fox referred to the historic houses on Lot 1 and Lot 5 and inquired whether or not staff believed new construction on Lot 6, located between Lots 1 and 5, would preserve the historic integrity of the neighborhood. Ms. Rondash confirmed that given the architectural design, staff feels that Lot 6, the house visible from the street, articulates the design elements within the neighborhood, including siding, wood shutters, and the front door type, and relates to those existing homes as well as preserves the character with the neighborhood.

Commissioner Pearce stated that she did not recall the Urban Forestry Fund as being an either/or proposition but rather, that if large trees were taken out, they were to be replaced with new trees, and payment would be made into the Fund. Chair Blank noted that in the past, developers have been asked to replace trees with new trees. Commissioner Narum stated that the Commission waived this requirement for the Nagy restaurant project; Chair Blank noted that this was done for commercial projects but not for residential ones.

Ms. Rondash stated that in working with the applicant on providing the covered parking for those existing homes and those constrained sites, one of the location options for that carport was where the open space for the play yard would be. She noted that this was not an optimal location, and the applicant was able to relocate that required covered parking to the portion of the home in proximity to the tree, resulting in the need to remove that tree. She added that for this reason, staff did not feel it was appropriate to require the applicant to pay into the Urban Forestry Fund.

Chair Blank noted that the presence of the Southern Pacific Railroad is not disclosed in the disclosures stated under Condition No. 53.

Ms. Decker replied that this was an oversight and noted that the Planning Commission has always had the desire to disclose the noise as well as the vibration resulting from the nearby railroad tracks.

THE PUBLIC HEARING WAS OPENED.

Jerry Raney, applicant, stated that he agrees with everything that has been presented and discussed his involvement with the City of Pleasanton and the Downtown. He noted that when the house next door came up for sale, he purchased it and began working with staff on home designs that would meet the Downtown Specific Plan guidelines. He added that after four months, a preliminary review submission was made, and following the incorporation into the plans of all recommended changes, the present application was submitted, with two more subsequent revisions. He noted that he believes he has complied with all the staff recommendations to make the project conform to what the City wants and the guidelines of the Downtown Specific Plan.

Commissioner O'Connor observed that on Lot 2, the carport, at less than 400 square feet, is undersized for a two-car parking structure. Mr. Raney replied that to meet the parking requirements, Lot 2 includes one covered and one uncovered spaces because there was not enough room for two covered parking spaces. He added that four of the houses would include two covered spaces and two to three off-street parking spaces. He indicated that only Lot 1 did not have two covered spaces.

Commissioner O'Connor noted that when he met with Mr. Raney onsite, Mr. Raney confirmed that the carports would be designed in a way they could be enclosed in the future.

Michael O'Callaghan, representing Jerry Raney, stated that he was speaking in connection with construction costs, Master Plan conformance, and the Pleasanton Downtown Association's (PDA) desire for higher density single-family, owner-occupied properties. He noted that this is the type of project the PDA supports. He added that railroads ran through the town about 15 times a day and that he had become accustomed to them. He indicated that they have manuals that they consult which provide design criteria that meet the same STC rating, engineering, and cost analysis and that they incorporate these into the overall project. He noted that the noise analyst review process is similar to a geotechnical engineering review process and that the designs will meet these criteria. He indicated that the project architect was also present in the audience.

In response to Commissioner O'Connor's inquiry regarding the cost to enclose the carport, Mr. O'Callaghan replied that it would most likely be a few thousand dollars per carport. He noted that it was his understanding that staff is interested in carports to see landscaping and streetscape; however, if the Commission so desired to have garages, the doors would cost about \$1,500 each, and the walls would be about \$158-\$160/linear foot, for a total cost of approximately \$8,000 to \$10,000 per garage.

Anne Boramé Reinhart stated that her father owned property at 4282, 4676, and 4664 Augustine Street and that she never has given thought to the railroad and considered this part of the heritage of Pleasanton. She indicated that she liked the proposed project, particularly the underground utility. She noted that her tenants have been curious about the project and expressed concern about parking. She inquired whether guests would have to park on Augustine Street, which is already jammed with cars, and if the City would allow RV's and boats to park on Augustine Street.

Mr. Raney distributed copies of photos which showed the location of the houses and depicted what would be done to alleviate the parking issue.

Commissioner Fox confirmed that parking RV's and trailers onsite were prohibited and that no parking is allowed on the private access drive; however, there are no parking restrictions on public streets.

Commissioner Narum clarified that automobiles or RV's could park on public street for only 72 hours, after which they must be moved.

Mr. Raney acknowledged that there is a parking problem on Augustine Street. He noted that the project currently has no parking garages or carports but that the proposed project would have 21 parking spaces, exceeding the City's requirement of two off-street parking per house or 12 parking spaces for the project. He stated that there would be sufficient parking for guests such that they would not need to park on Augustine Street.

Commissioner Fox inquired if the 30-inch tall solid fence in the front yard would remain. Mr. Raney said yes.

THE PUBLIC HEARING WAS CLOSED.

Commissioner Fox stated that she liked the project, its size, and architecture, but that she would like to clean up some of the conditions. She complimented the application, stating that she liked the way the project was presented and was impressed with the colored renderings on the floor plans. With respect to the carports, she indicated that she wants to make sure people do not put up lattice in the carport and use the carport for storage.

Commissioner Pearce agreed and stated that she believed the project was great for the Downtown. She noted that it is an appropriate infill project with great detail and that the size of the houses was appropriate. She supported the carports believing that they reduce the concept of massing, and given the density, she was inclined to reduce the appearance of massing from the street as much as possible. She indicated, however, that she was not in favor of the staff's not requiring payment into the Urban Forestry Fund for the tree to be removed and proposed that a condition be added requiring the applicant both to pay into the Fund and plant new trees.

Commissioner Olson indicated that his only concern was the carports, but that after staff's explanation of the rationale behind them, he no longer has a problem with them. He noted that overall, the project is great for the Downtown and supported it.

Commissioner Narum echoed almost everything that has been mentioned, but expressed concern that with the way the project is being put forward, the two historic houses could conceivably have additions and potentially be replaced with new construction. She requested that a condition be added that the Commissioners be provided with plans for any Zoning Administration approval of

additions or new construction on the two houses on Lots 1 and 5, such as is done for the houses on the Mariposa Ranch subdivision.

Commissioner O'Connor indicated that he likes the design plans as well but expressed concern about the carports. He noted that he understands the concept of massing and wanting to see through for at least two of the lots, but he believes Lot 5 needs a garage as it fronts on Augustine Street. He suggested that the architecture of the existing home be matched to make it more attractive.

Chair Blank indicated that he liked the project overall and had the same concern about the carports; however, he believed the rationale seems logical and made sense. He recommended that the conditions include the language suggested regarding having the plans reviewed by the noise engineer to ensure the criteria are met, that the Commission be provided the plans for new construction on Lots 1 and 5, and that the noise and vibration from the Southern Pacific Railroad line be disclosed in the deed so potential owners would know it is there. He indicated that he supported the replacement of trees, stating that it has been required in every other residential development. He inquired if the trees were replaced one-to-one and suggested a compromise to have the developer pay into the Urban Forestry Fund the equivalent of one-half the cost of the tree to be removed.

Commissioner Pearce moved to make the findings that the proposed application is covered by CEQA Class 32, Section 15332 A-E and that the proposed PUD development plan is consistent with the General Plan for the purposes of the PUD Ordinance, to make the PUD findings as listed in the staff report, and to recommend approval of PUD-72, subject to the conditions of approval listed in Exhibit B, with the following modifications and additions: (1) Add the condition regarding a cost analysis as detailed in the July 23, 2008 memo from staff; (2) Include language in Condition No. 21 that the noise mitigation measures shall be reviewed by a qualified acoustical professional; (3) Modify Condition No. 53 to include the disclosure to prospective owners of the noise and vibration generated by trains on the Southern Pacific Railroad tracks;(4) Add a condition that the project developer pay to the Urban Forestry Fund an amount equivalent to one-half of the estimated value of the heritage tree to be removed; (5) modify Condition No. 16 to specify that all carports and garages be used solely for parking and not for storage; and (6) Add a condition that the Commission be provided copies of plans for all Zoning Administrator approvals for modifications or new construction on Lots 1 and 5. Commissioner Fox seconded the motion.

Commissioner Narum noted that she would like to see more flexibility with respect to the condition that there be no modifications to carports. She stated that installing trellising and vines would be acceptable. Commissioner Pearce

clarified that the language specify that there be no material modifications that would encourage storage.

Chair Blank inquired of staff how the condition could be written to accomplish trellising and vines. Ms. Decker suggested clarification on Lot 5 to have an enclosed garage versus a carport, which was not part of the motion and which the Commission indicated was not supported. With respect to modifications to the carports, she noted that the applicant had indicated that the carports were constructed in order to allow them to be enclosed as garages in the future. She pointed out that adding this particular condition would preclude anyone from enclosing it without modification to the PUD, which could be determined to be minor by the Director of Planning and Community Development unless there were related controversies or issues that would make them a major modification.

Chair Blank noted that if someone wanted to convert his or her carport to a full-fledged garage, he would like this to return to the Planning Commission because of the visual impact.

Commissioner Fox clarified that she was not opposed to conversions but was concerned about homeowners putting up temporary structures to try and enclose carport space in order to hide storage.

Chair Blank inquired if material changes allow this flexibility, and Ms. Decker replied that this would be subjective. She indicated that staff would need additional clarification in terms of the kinds of limits. She noted that staff may or may not have a design review process for a pre-existing accessory structure that is less than ten feet in height; however, if the Commission desires to restrict any modifications, including the installation of lattice work, staff can provide that condition.

Chair Blank confirmed that someone putting up lattice would not necessarily require a building permit. He therefore suggested that it be for any construction that would require a building permit.

Ms. Harryman noted that there is already a condition that prohibits storage in the carport area and that Code Enforcement Officer would monitor this.

Commissioner Narum agreed but indicated that someone wanting his or her carport enclosed should have that option. She also agreed to have this come before the Planning Commission.

Ms. Decker stated that the Planning Commission could consider as a condition the requirement for any modifications to the carport to be reviewed as a PUD modification and that the Director of Planning and Community Development would then evaluate whether it is major or minor and whether or not it should be

forwarded to the Planning Commission. The Commission members agreed with this recommendation.

Commissioner Pearce amended her motion to include that language. Commissioner Fox agreed with the modification.

ROLL CALL VOTE:

AYES: Commissioners Blank, Fox, Narum, Olson, and Pearce.
NOES: None.
ABSTAIN: None.
RECUSED: None.
ABSENT: None.

Resolution No. PC-2008-39 recommending approval of PUD-72 was entered and adopted as motioned.

Chair Blank called for a 10-minute break at 8:20 p.m. and thereafter, reconvened the regular meeting at 8:30 p.m.

5.d. PRZ-42 , City of Pleasanton

Application to pre-zone a 13.26-acre site to the Agriculture (A) District for the proposed Annexation No. 152 (Martin Avenue Buffer Zone) located on the east side of Martin Avenue. The parcel is currently unincorporated and has a General Plan designation of Public Health and Safety.

Donna Decker presented the staff report and briefly summarized the background, history, and scope of the proposal. She then presented the proposed boundary map to the Commission and the topography of trails.

Commissioner O'Connor noted the trail was unimproved and inquired whether staff has anticipated for it to remain unimproved. Ms. Decker replied that the trail was not anticipated to be improved and that vegetation and weeds would be cleaned up and maintained regularly, but the trail would remain natural and "as is."

Ms. Decker continued that there are two possible zoning districts the property could be pre-zoned to: Agriculture and Grazing (AG) and Public Health & Safety (PHS). She noted that the City does not have an Open Space zoning and that in the past, open space has been designated as Agriculture (A), such as in the Austin and the Spotorno properties, which are zoned PUD-A.

Ms. Decker further indicated that there is also the opportunity for the Public and Institutional (P&I) designation; however, a conditional use permit (CUP) would be required to designate the property for trails use. She noted that Zone 7, as property owner, would have to initiate the CUP; however, Zone 7 is not interested

in applying for a CUP, and the City cannot require Zone 7 to do so. She pointed out that with this scenario, an A designation would be more fortuitous.

Commissioner O'Connor inquired what was allowed besides open space in an A zoning. Ms. Decker replied that Exhibit F of the staff report lists a number of things, including small structures and a single-family home. She added that the City has no intent to build, change, modify, or otherwise construct any sort of structure on the area. She stated that the purpose of the License Agreement is to maintain the site as is and be able to maintain it as a community amenity.

Commissioner O'Connor inquired how the City would ensure that a structure is not built and whether or not conditions to this effect should be in place. Ms. Decker replied that the property is owned by Zone 7 and that the purpose of the proposal is simply to allow the land to be annexed to the City.

Commissioner O'Connor noted that if the property is pre-zoned A and the License Agreement does not prohibit it, Zone 7 could build on the property in the future if it so desired. Ms. Decker reiterated that the purpose of the License Agreement and the pre-zoning is to allow the land to be annexed to the City.

Commissioner O'Connor inquired whether or not there would be an option to rescind the License Agreement ten years down the line and suggested setting a time cap of 25 years to provide maintenance of the area. He inquired if the License Agreement would be a public document, and Ms. Harryman confirmed that it would be.

Commissioner Fox noted that the property is currently zoned Public Health and Safety and inquired if the General Plan prohibits building structures under this zoning. She inquired if a General Plan amendment would be required if a portion of the land was sold off for profit.

Ms. Decker replied that the License Agreement sets up a contract between Zone 7 and the City, and should Zone 7 wish to sell off or change ownership, the City would be engaged. She indicated that there would be a process prior to simply selling the lands off.

Commissioner Fox inquired if the General Plan does not prohibit dwellings to be put on lands designated Public Health and Safety designations. Ms. Decker replied that was correct.

Commissioner Narum inquired if, after the land is annexed to the City and at some point Zone 7 decided it wanted to sell off a piece, the zoning and approvals would come under the control of the City as opposed to the County. Ms. Decker replied that would be the case.

Commissioner Narum then inquired if it would be better to annex to the City if the City does not desire to build on this property. Ms. Decker confirmed that was correct.

Commissioner Olson inquired if it would be correct to say that the City assumes the standard indemnification for this property. Ms. Harryman said yes. She added that this was one of the reasons the City wanted to annex the property as it was maintaining property that is outside the City limits.

Commissioner Fox referred to Exhibit D and noted the triangular portion on the north and south ends which used to be accessible to the public. She inquired why the annexation does not include these areas. Ms. Decker replied that the City was working with Zone 7 for a Lot Line Adjustment to frame and carve out the triangular areas to be considered and acknowledged as the Martin Avenue Buffer Area. She noted, however, that the triangular areas have been left out and that she was not aware of the intent then as she was not part of those negotiations. She indicated that the Lot Line adjustment has already been recorded and no additional lands would be added to this area for consideration for annexation.

Commissioner Fox referred to the License Agreement and inquired if there was a provision that during the 25-year term, the property would remain as open space and that there would be no structures and no Lake I maintenance road. Ms. Harryman replied that she worked on the License Agreement and that the language states that the purpose is for the City to be able to maintain and operate the site for park and recreation purposes and that the City cannot put in improvements or structures without receiving Zone 7 approval. She added that the City does have obligations for weed abatement and that there is no reference to a Lake I maintenance. She noted, however, that Zone 7 retains the ability to continue to use the property for water management purposes and that the pre-zoning was a way for the City to allow residents to continue to use the area as a passive open space while giving Zone 7 assurances regarding liability and maintenance issues.

Commissioner Fox noted that some of the arroyos in Pleasanton include trails and use of trails and inquired why Zone 7, who she assumed owned the properties, has allowed that use in those areas. Ms. Harryman replied that this subject came up during negotiations and that Zone 7 has taken different approaches through the years. She stated that her impression is that Zone 7 is pushing back, and if the property will be maintained as open space, Zone 7 is trying to shift the maintenance and liability responsibilities as Zone 7 is in water management. She pointed out that there are cities that lend themselves well to recreational space, and it is finding that happy medium which is what the City has done.

Commissioner Fox referred to the future of the Chain of Lakes and inquired if this is the model they will agree to in principle as the Chain of Lakes goes forward, if there will be the ability for passive recreation, or if the Martin Avenue piece will remain the way it is. Ms. Harryman replied that the negotiation took a long time, and that Zone 7 and the City were focused on getting this matter wrapped up.

Commissioner Fox noted that in 2004-2005, Ponderosa and the City took out the bike path and then installed the storm drain and rebuilt the bike path. She inquired who owned the property between trees and the curb and if the City will also replace trees that were damaged.

Wes Jost replied the Martin Avenue right-of-way is adjacent to the buffer, and there is no gap between the buffer area and the road right-of-way. He indicated that the City will control that entire area and that according to the landscape architect, most of the dying trees are Black Walnut trees, which have lived their normal life cycle and will be removed by the City with no intention of replacing them.

Commissioner Fox inquired what the process to have the trees replaced would be after the License Agreement is signed. Mr. Jost replied that he was not aware of that the Agreement calls for in this regard but that this would fall under the responsibility of the Department of Parks and Community Services.

In response to Commissioner Fox's inquiry if there was an encroachment permit since the pipeline was under the bike path, Mr. Jost replied that the maintenance of the pipeline is the City's responsibility after it was installed by Ponderosa. He added that this would be included in the License Agreement.

THE PUBLIC HEARING WAS OPENED.

Michael O'Callaghan indicated that he has been involved in the area since 1978 when homes were being built in the Martin-Trener area. He stated that their understanding then was that the buffer area was always going to be open space and part of the Chain of Lakes. He noted that he has worked since 1980 on infill development and that nothing strikes more clearly than a Public zoning. He stated that developers have no fear of Agricultural zoning as they see properties like the buffer as opportunities for making money. He added that he sees a playing chip between Zone 7 and the City for a long-term trade-off as many developers like parcels where they could build custom homes and still have enough room for trails. He indicated that he believes the buffer area should remain open space and that as a citizen, he would like to see a Public zoning. He stated that the Commission should carefully consider its zoning if the City is really interested in keeping area as open space in perpetuity and developed into the Chain of Lakes.

Commissioner Blank disclosed that he personally knows Sherryl Dennis.

Sherryl Dennis stated that she has seen a lot of land with Agriculture zoning get changed to housing over the years. She voiced concern with the fact that Agriculture can be changed and inquired if there was any other way to protect it. She noted that when the Mohr elementary school was built, there were no sidewalks, and the trail provided the off-street access from the neighborhood to the school. She indicated that the trail must remain and requested that it be protected.

THE PUBLIC HEARING WAS CLOSED.

Commissioner Fox inquired how easy it would be to re-zone an Agriculture district in order to build homes. Ms. Decker replied that as Ms. Harryman had earlier explained, the language in the License Agreement is to maintain the property as parks and recreation lands and to be solely maintained by the City. She noted that she was not an attorney but that she believed this language establishes that no other structures could be built on the property, and that if the property is within the City's incorporated area, a property owner would not be allowed to build something without the City's involvement with the License Agreement and the planning process.

Chair Blank inquired what harm might result from zoning the property P instead of A. Ms. Decker replied that the difficulty with a P zoning is that Zone 7 would be required to process a conditional use permit for the trails and open space use, and the City would be adopting a pre-zone that is non-conforming to the current use. She added that it is unlikely that Zone 7 would process this, and there is no opportunity for the City to enforce that request.

Chair Blank requested clarification that the property cannot be pre-zoned P and have a conditional use permit approved to pre-zone it for that use as the owner would be required to process that use permit. Ms. Decker confirmed that the owner would have to file the use permit to establish the use of the trail; without the use permit, the area would have a non-conforming use.

Commissioner Fox inquired if the Council would be considering the License Agreement. Ms. Harryman replied that the City Manager has the authority to execute the Agreement but that she was not certain whether or not the City Manager had determined to bring it before the Council for consideration.

Commissioner Fox inquired why the City Council would not have to review the Agreement and stated that she believed a public hearing should be held. Ms. Harryman replied that there is no reason for the Council to see the License Agreement, but it would be the Council's decision to pre-zone the area and the Local Agency Formation Council (LAFCo) to annex.

Commissioner Fox noted that the A District permits one single-family dwelling, which would mean that Zone 7 could actually build a house in the area without any planning process. Ms. Decker clarified that Zone 7 would not be able to do so because the property would be incorporated into the City of Pleasanton, and Zone 7 would need to apply to build a home on City property, which would go through a design review process. She added that the City reviews all design review projects for property within the City boundary, whether they are incorporated or unincorporated. She noted, as an example, that owners in the unincorporated area of the City known as the Remen Tract are required to go through the City design review process, although the area is part of unincorporated Alameda County.

Chair Blank inquired if, should someone come forward with an application for a house in a straight-zoned parcel and met all of the criteria and was denied by the administrative body, the person could sue for discrimination. Ms. Harryman replied that this area is designated as trails and that there are other overriding documents in addition to the pre-zoning for Agriculture.

Commissioner Fox inquired if this is inside the Urban Growth Boundary (UGB) line of Measure D. Ms. Decker referred to Exhibit C and noted the blue line that defines the urban growth boundary. She noted that the Martin Avenue Buffer Zone is in the northeast quadrant, which is within the UGB.

Commissioner Fox requested verification that the City cannot adjust the UGB line inward in order to develop without Alameda County's agreement. Ms. Harryman verified that was correct.

Commissioner Narum stated that it seems to her that annexing this into the City is far better because it gives the City control over the land in terms of the planning process and ensures that the City has a trail that is a key part of the Trails Master Plan. She noted that working with Zone 7 to get the trails opened up has been a priority and indicated that she trusts the City Manager and the City's legal staff to arrive at an agreement that will protect the interests of the City such that no houses will be built on the site.

Commissioner Narum moved to find that PRZ-42 is statutorily exempt from CEQA and that the pre-zoning is consistent with the General Plan and to recommend approval of the proposed pre-zoning of the 13.26-acre site to Agriculture (A).

Commissioner Olson seconded the motion.

Commissioner Fox inquired what the zoning of the current arroyos in the City. Ms. Decker replied that the arroyos are held in various ownership by Alameda County, Zone 7, the City, and private ownerships that go to the center or off center of the arroyos. She added that not all the arroyos have the same zoning designations and that in many cases there are no easements necessary unless

developments have specifically provided for the use throughout development. She noted a recent example in the Lynn-Jansen property, where similar discussion focused on having pedestrian access along the arroyo and the ownership of that arroyo. She explained that it involved an irrevocable offer of dedication to Zone 7 and that Zone 7 has not accepted that dedication to date, which leaves the arroyo under a residential zoning with easements across it for public access.

In response to Commissioner Fox's inquiry regarding whether any arroyos were zoned P, Ms. Decker replied that her research for this project did not include the zonings of all the arroyos in the City.

In response to Commissioner Fox's inquiry regarding the ownership of the arroyos in the Downtown, Ms. Decker replied that the ownerships go into the center of the arroyos and are consistent with the residential and commercial zoning of the area.

Commissioner Fox inquired if the Tri-Valley Conservancy (TVC) was consulted for this project, and Ms. Decker replied that she believed that the TVC was not consulted regarding potentially having a conservation easement over the buffer area. She reiterated that the purpose of this particular project is to effect the License Agreement between Zone 7 and the City and that the TVC was not involved in that discussion.

Commissioner Pearce stated that she supported the motion and that while she would prefer to see the area zoned Public and Institutional, she understands the limitations and constraints of dealing with land that is not actually under the City's control. She indicated that she appreciates the City having a desire to maintain the buffer zone and believed that it would be great if the City could do with more with the Zone 7 properties. She noted that she would have preferred to see the License Agreement because of the particulars that it would contain; however, given the constraints of the particular parties and extent of negotiations, she will support the motion.

Chair Blank inquired why this was being rushed and why it needed to be pre-zoned this year. Ms. Decker replied that the negotiations to effect this Agreement have been going on for the past two-and-a-half to five years. She noted that Zone 7 has maintained its position over time that it does not deal with public trails. She added that the negotiations had been complex and extensive and that staff now has the opportunity to complete this Agreement.

Chair Blank noted he was taken aback by the testimony tonight from a well-known developer who stated that developers would be greatly attracted to land that are zoned Agriculture where they could possibly develop million-dollar homes and that they would not be able to touch land that is zoned P. He added that there could be a different City Council in five years who may meet with

Zone 7 to jointly revoke the License Agreement and do a *quid pro quo*. He stated that while he is generally supportive of the way these things come forward, he is not comfortable with the fact that staff is depending highly on a License Agreement that it has not seen and which staff is asking the Commission to depend on, as well.

Ms. Decker noted that the Licensing Agreement is neither a planning document nor a part of this action. She added that under the A zoning, this particular piece of property prohibits any development except for one home.

In response to Commissioner Fox inquiry if the City would have control over any application to subdivide the property, Mr. Dolan replied that was correct. He added that as Commissioner Narum pointed out, the City will be in a better position than where it is at today. He stated that it is not perfect, but negotiations are in place and there is another side of the conversation that is not necessarily inclined to give the City everything it wants. He confirmed that Zone 7 is not in the open space or the residential development business and noted that single-family homes next to Zone 7's facility is not consistent with its mission.

Chair Blank agreed with Mr. Dolan but noted that a residential homeowner and a developer are both asking to zone the property P rather than A. He reiterated that while the License Agreement is not part of the process, staff is relying upon it. He stated that this is an imperfect package with varying levels of discomfort as he was unsure of what would happen in five or ten years while, at the same time, he feels like he is in a position of not being able to say no without derailing the entire process. He stated that this was not his intent but that he wants to go on record that he feels very uncomfortable with the process that is being brought forward to the Commission.

Commissioner Olson stated that he felt this was really up to the City Manager and not even a matter for the City Council. He added that this then takes the matter out of the Commission's hands and asked why this is before the Commission in the first place.

Chair Blank stated that he will support the motion because he has no choice. He added that he believes this is not a good process and hopes that the next time it comes forward, the City should figure out a way to provide information to enable the Commission to make an informed decision.

Commissioner Olson noted that the City cannot prevail upon the owner to apply for a conditional use permit, in which case if the City Manager does not execute the Agreement, there is a risk that Zone 7 would leave it the way it is, and the City will have not improved its position at all. He stated that he sees this as a risk and a reason to vote for the motion.

Mr. Dolan noted that the risk is a reality.

Commissioner Fox indicated that she would abstain because she does not have enough information to know whether the License Agreement actually has the stipulations of her concerns, which is the commitment to maintain it as open space. She added that she has been going to Livermore's El Charro Specific Plan meetings regarding the Chain of Lakes and the entire area from the Livermore side and that there were always a number of developers with their lawyers sitting in the audience and talking houses.

Commissioner O'Connor inquired what the downside was if the City pre-zoned the property P and the non-conforming use was allowed to continue. Mr. Dolan replied that it could make the process a little more difficult at LAFCo.

Commissioner Fox inquired if the City could return with an A zoning if LAFCo denied a P zoning. Mr. Dolan replied that Zone 7 would be displeased with this scheme.

Chair Blank read out the section on the Commissioner's Handbook regarding the protocols for abstentions and inquired if an abstention would count as a "yes" vote. Ms. Harryman confirmed that was correct.

Commissioner Fox stated that she has abstained in the past and added that she is uncomfortable with this situation and feels the best thing to do is to abstain.

Chair Blank noted that several Commissioners have indicated some discomfort with this project, which would be reflected in the record, and ten years from now people who read the extensive minutes would be able to draw their own conclusions.

Commissioner O'Connor inquired if there was anything that would prevent the Commission from recommending a P zoning to Council with the non-conforming use, and then let Council decide whether it wants to go with it or override it with an A zoning.

Commissioner Fox inquired if she could make a substitute motion. Ms. Harryman replied that Commissioner Fox could make a friendly amendment.

Commissioner Fox made a friendly amendment to the motion to recommend that the land be pre-zoned to Public and Institutional. Commissioner Narum did not accept the friendly amendment.

ROLL CALL VOTE:

AYES: Commissioners Blank, Narum, Olson, and Pearce.
NOES: None.
ABSTAIN: Commissioner Fox.
RECUSED: None.
ABSENT: None.

Resolution No. PC-2008-40 recommending approval to the Council of PRZ-42 was entered and approved as motioned.

Commissioner Fox inquired if the Council packet would have a copy of the License Agreement attached to the staff report. Ms. Harryman replied that would be a decision to be made by the City Manager.

7. MATTERS INITIATED BY COMMISSION MEMBERS

- a. Discussion of the types of projects to be placed on the Consent Calendar.

No discussion was held or taken.

Delivery of Planning Commission Packets

Commissioner Narum noted that the Wednesday packet was delivered at 8:10 p.m. and voiced concern that staff should not have to work to deliver packets at that late hour. She stated that if the packet is not ready by 5:00 p.m. on Wednesday, staff should wait to deliver it on another day. Chair Blank agreed that staff's intent is for delivery on Wednesday, but if it is not delivered by 5:00 p.m., he was amenable to having the packet delivered on Thursday morning.

Ms. Decker referred to the Commissioner's Handbook which states that Commission packets are to be delivered one week in advance of the meeting date.

The Commission agreed that the packets are not ready for delivery by 5:00 p.m., they should be delivered the following day.

Best Friends Center and Other Facilities

Commissioner Fox reported that a van was parked on Black Avenue across from the Aquatic Center advertising that Best Friends Center was open and did tutoring from 8:00 a.m. to 6:00 p.m. She inquired if the facility was approved as O straight-zoned and requested that staff look into this as well as four other facilities whose information she could provide to Ms. Decker. Ms. Decker

advised that she would look into this matter and provide a follow-up at the next meeting on August 13, 2008.

8. MATTERS FOR COMMISSION'S REVIEW/ACTION

- a. Consideration of the Planning Commission's Decision Regarding the Timeline for the Sunrise Senior Living Facility Project Facilitation Process.

Commissioner Pearce moved to extend the facilitation process for the Sunrise Senior Living Facility Project to October 15, 2008. Commissioner Narum seconded the motion.

ROLL CALL VOTE:

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

The motion passed.

- a. Future Planning Calendar

Ms. Decker provided the Commission with the following dates of future meetings:

August 27	Joint City Council-Planning Commission workshop regarding the Hacienda Housing.
August 13	Regular meeting with Current Planning items.
September 10	Staples Ranch projects only.
September 24	General Plan Draft EIR and General Plan review only. Non-controversial items will be placed on the September 10 and 24 Consent Calendar agenda in order to move projects along, and if the Commission has any problems with the projects, the application will be continued to a future meeting.
October 15	Regular meeting with Current Planning items.

Janice Stern has requested that the Planning Commission consider additional special meetings in October to continue discussion on the General Plan.

Commissioner Pearce observed that the Joint Council/Planning Commission workshop on the Hacienda Housing is being held on a Planning Commission regular meeting date. Ms. Decker confirmed Commissioner Pearce's observation.

b. Actions of the City Council

No discussion was held or taken.

c. Actions of the Zoning Administrator

Commissioner Pearce inquired what PMS-72, Sarich was about. Ms. Decker replied that the PUD was approved by the City Council and in order to implement that PUD, the Minor Subdivision Map was submitted to the City. She noted that this is a Zoning Administrator action because the subdivision is for less than five parcels. She stated that a public hearing was held at the Staff Review Board with Zoning Administrator, and no one attended except the architect, engineers, and the applicants. She indicated that the application met the Subdivision Map Act requirements and was approved.

Commissioner Fox inquired if this is for the second unit. Ms. Decker said yes and added that the second unit wrapped around the existing home with the proposed future garage, and the remainder is the 19 acres on the knoll where the new home would be built.

Chair Blank inquired if the subdivision was discussed at the PUD process. Ms. Decker replied that the subdivision is not part of the PUD process but that the plans showed the creation of a one-acre parcel for the existing home which the Sariches are entitled to, and the 19 acres which would encompass the remainder of the site. She noted that the applicants are entitled to six additional units on the lower area, which they are not developing at this time and on which vineyards will be planted instead. She added that there are four benches that go up the hill from Old Vineyard Trail.

Chair Blank confirmed with staff that the appeal period expires 15 days from last Thursday.

Commissioner Pearce requested that the Commission be provided copies of the written application, minutes, and conditions of approval prior to the expiration of the appeal period. Ms. Decker clarified that an appeal of a minor subdivision is related only to the Subdivision Map Act and does not encompass anything other than that.

Commissioner Narum recalled that the PUD conditions required any changes to the house design to return to the Planning Commission. Ms. Decker confirmed that was correct.

In response to Commissioner O'Connor's inquiry regarding whether the 19-acre and one-acre subdivision were presented in the PUD staff report, Ms. Decker said yes.

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

12. ADJOURNMENT

Chair Blank adjourned the Planning Commission meeting at 9:50 p.m.

Respectfully,

DONNA DECKER
Secretary