



PLANNING COMMISSION MINUTES

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

APPROVED

Wednesday, April 9, 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 April 9, 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; Natalie Amos, 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. February 13, 2008

Commissioner Narum requested that the first and second sentences of the first full paragraph on page 36 be modified to read as follows: "Commissioner Narum ~~inquired~~ *stated* that if the application was being denied without prejudice so that the applicant may have the opportunity to get a daycare license, ~~and determine she wanted to know~~ what the remedy would be to cure the third finding. She noted that if the occurrences ~~that~~ went back five years, the applicant did not have a remedy to fix those issues."

Commissioner Narum requested that the seventh sentence of the last paragraph on page 38 be modified to read as follows: “He noted that this building had a four-car-per-1,000-square-foot –building ration, which was generally adequate ~~for this~~ *except for one* tenant ~~that~~ *who* used more than his share of parking;...”

Commissioner Olson noted a typographical error in the first sentence of the second paragraph on page 31 and requested that the it be corrected as follows: “John Pfund noted that there were ~~two~~ *two* issues.”

Commissioner Olson noted another typographical error in the first sentence of the first paragraph on page 32 and requested that it be corrected as follows: “She added that it further said ‘children may arrive or depart ~~form~~ *from* the facility on their own.’”

Chair Blank likewise noted a typographical error in the first sentence of the eighth paragraph and requested that it be corrected as follows: “~~Mr.~~ *Mr.* Pfund then presented a number of exhibits and stated....”

Chair Blank noted that with respect to the motion made by Commissioner Pearce and seconded by Commissioner Narum on page 14, he would like to point out that after the break, Mr. Roush had crafted a new language for Condition No. 3 to which all the Commissioners agreed and which went to a vote on page 16. He requested that the new language be bold-faced as part of the motion.

Commissioner Fox noted that in the sixth paragraph on page 6, it was she and not Mr. Roush who inquired whether the enclosure must be sprinklered. She requested that the correction be made.

Commission Fox stated that she had Mr. Roush review the revisions she had made on the minutes and requested that the revisions made by Mr. Roush in the first and second sentences of the second paragraph on page 18 be made as follows: “Ms. Decker also addressed ~~from~~ what school sites ~~in Pleasanton~~ the applicant had been transporting children ~~from in Pleasanton~~ to his facility prior to the ~~cease~~ *City’s* letter ~~to the applicant that he cease operations pending a decision on the conditional use permit. and indicated that it was~~ *The school sites were* Lydiksen Elementary School, Hearst Elementary School, Valley View Elementary School, and Pleasanton Middle School. She added that at Valley View Elementary School, there was ~~an adult supervision from the school to the van provided by teaching staff from PUSD~~ *teaching staff to the van from school.*”

Commissioner Fox noted that there was a typographical error in the first sentence of the last paragraph on page 24 and that “January 4, 2004” should be “*January 27, 2004.*” Chair Blank clarified that there were two letters; one was dated January 4, 2004, and the other was dated January 27, 2004.

Commissioner Fox requested that the first sentence of the third paragraph on page 26 be modified to read as follows: “In response to an inquiry by Commissioner Fox regarding whether the City Attorney agreed with ~~that~~ *Mr. Pfund’s* statement, Mr. Roush replied....”

Commissioner Fox noted that the date in the second sentence of the paragraph following the motion on page 35 should read “January 27th” rather than “January 17th.”

Commissioner Pearce moved to approve the February 13, 2008 minutes as amended.

Commissioner Fox seconded the motion.

ROLL CALL VOTE:

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

NOES: None.

ABSTAIN: None.

RECUSED: None.

ABSENT: None.

The minutes of February 13, 2008 were approved as amended.

b. February 20, 2008.

Commissioner Olson noted that the first sentence under Page 11-7 on page 14 be modified to read as follows: “Commissioner Olson *asked* what the source was for the noise contour for the airport.”

Commissioner Olson noted a typographical error in the second sentence of the second paragraph under Page 11-19 and requested that it be corrected as follows: “Ms. Stern explained that the Commission would look at the noise environment for a particular site ~~an~~ *and* then determine if the project is appropriate....”

Commissioner Olson inquired why the fourth and fifth paragraphs on page 18 were in brackets. Commissioner Fox explained that she was absent at that meeting and had submitted her comments in writing. Commissioner Olson stated that this should probably be clarified in the minutes.

Commissioner Fox requested clarification on the sentence in the first paragraph under Page 9-1 which reads: “Commissioner Pearce supported Commissioner Fox’s comment that the statement that air quality has improved over the past 30 years would be supported by residents.” She noted that her written comment indicated that the statement would *not* be supported by residents. Commissioner Pearce concurred with Commissioner Fox’s observation and requested that the sentence be modified to read as follows: “Commissioner Pearce supported...the past 30 years *might not* be supported....”

Commissioner O’Connor noted that the sentence in the second paragraph under Page 11-15 does not make a lot of sense within the context of the discussion. Chair Blank stated that it was actually in context. He recalled that the Commission was talking about noise in the Staples Ranch area and the fact that the Commission had discussed that

the City needs to do a better job in requiring soundproofing windows and walls if the houses are going to be in airport influence area. Commissioner O'Connor requested that the sentence be expanded to include that context as someone who just reads that sentence would not understand what it meant.

Commissioner Olson moved to approve the minutes of February 20, 2008, as amended.

Commissioner O'Connor seconded the motion.

ROLL CALL VOTE:

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

The minutes of February 20, 2008 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.

There were none.

4. REVISIONS AND OMISSIONS TO THE AGENDA

There were none.

5. CONSENT CALENDAR

There were no items for consideration.

6. PUBLIC HEARINGS AND OTHER MATTERS

a. PCUP-205, Paul and Janna Rocha

Application for a conditional use permit to relocate and replace the 5,000-gallon wood tank with a new 5,000-gallon poly tank in the rear yard of the existing residence located at 481 Sycamore Road. Zoning for the property is PUD-A (Planned Unit Development – Agriculture) District.

Chair Blank explained the procedure to be followed for the hearing, starting with the report from staff, after which the public hearing will be opened. He continued that the applicants will be given ten minutes to present their project, followed by any member of the public who will be given five minutes to speak, and finally the applicants will be given another five minutes to respond to the public comments.

Ms. Amos inquired if the appellants will also be given ten minutes to speak and noted that both projects had appellants. Chair Blank replied that he did not realize there were appellants as the project descriptions did not indicate that; he stated that appellants would also have ten minutes to speak.

Ms. Decker clarified for the record that there are no appellants for either project. She stated that this is the first hearing before the Planning Commission for both projects and added that there may be those who do not support the project, but those are not considered appellants.

Ms. Amos then summarized the staff report and described the background, scope, and layout of the proposed project.

Commissioner Fox disclosed that she visited one of the neighbors who is opposed to the project.

Commissioner Pearce disclosed that she visited with the applicant as well as with one of the neighbors.

Chair Blank disclosed that he visited with the neighbor at 455 Sycamore Road.

Commissioner Olson disclosed that he met with the applicant and with the neighbor to the rear.

Commissioner Narum disclosed that she also met with the applicant and with the neighbor to the rear.

Commissioner O'Connor disclosed that he also visited with the applicant and with the Segundos who live to the rear.

Ms. Amos called the Commissioners' attention to a couple of revisions to the staff report. She noted that in Condition No. 1 of Exhibit B, the date of the related materials should be November 7, 2007 rather than November 7, 2008. She added that the height of the new poly water tank at the bottom of the chart on page 5 of the staff report should be approximately 15 feet instead of 10 feet.

Ms. Decker added that for the Commission's information, the staff report identified that the new tank is being used not only for agricultural irrigation but also for domestic uses. She noted that since the writing of the staff report, staff has determined that the site is connected to City water and is metered as well, specifically for domestic use. She added that wells within the City are allowed to be used for irrigation and landscaping as long as there is an appropriate backflow prevention device that separates domestic use from irrigation use.

Commissioner O'Connor requested clarification that the well is not being used for domestic purposes. Ms Decker explained that once a piece of property is connected to the City water system, wells are no longer allowed to be used for domestic purposes, and, consequently, backflow prevention devices are required.

Commissioner Fox stated that from the pictures of the old wooden tank and the new poly tank and looking at the fence in the background and the size of the fence in both pictures, it appears that the picture of the old wooden tank was taken a lot closer to the tank than the new picture. She noted that when she tried to align the slats of the fences on both pictures, it appears that the old wooden tank is smaller than the new one. She inquired if the picture was taken very close to the old water tank, which makes it look very big.

Ms. Amos replied that based on the information that was provided by the applicant, both tanks are about the same size. She added that the new tank is set back approximately 35 feet from where the old tank used to be located, which might be the reason for the differing perception on the picture.

In response to Chair Blank's inquiry if the picture was taken by staff, Ms. Amos replied that the picture with the old water tank was provided by the applicant.

Commissioner Fox indicated that she needed some clarification on the phrase "to relocate" on the description of the application. She inquired whether staff is recommending that the new water tank be moved down toward the garage or that it stay where it currently is. Ms. Amos replied that staff's recommendation is that the tank stay where it is currently located.

Commissioner Pearce requested clarification regarding the correction made by Ms. Amos that the height of the new poly water tank was 15 feet and inquired if the old wood water tank was also 15 feet. Ms. Amos replied that in the applicant's narrative, the height of the tank was listed at 10 feet, but when she visited the site, she noted that although she did not measure the tank, based on her perception and experience, the water tank appeared to be over 10 feet in height. She indicated that the old tank could have been around ten feet high, which can be clarified by the applicant.

In response to Commissioner Fox's inquiry if the new tank might be more like 18 feet high, Ms. Amos replied that she did not know.

Commissioner Pearce inquired what distance would be required to move the tank if it were moved behind the garage. Ms. Amos replied that depending on which area of their property the neighbors to the rear would be utilizing, the tank would have to be moved anywhere between 20 and 30 feet to be fully screened.

Commissioner Narum inquired if the 30-foot rear yard setback of the new water tank presented in the chart on page 5 of the staff report was an actual measurement or an estimate. Ms. Amos replied that this was measured.

Commissioner O'Connor noted that the staff report states that the fence at the end of Diamond Court was changed. He inquired if it was originally a solid fence. Ms. Amos replied that from her conversation with the property owners at 455 Sycamore Road, the property owners had removed the fencing and landscaping along that area to open up the area for those living on Diamond Court to provide a greater sense of openness in that area. She added that she was not sure if the fence was originally solid and that the owner were present and could provided that answer.

Chair Blank indicated that he wanted to make sure that he had the right chronology and inquired if staff had the date when the poly tank was put in and if this occurred before the a conditional use permit application was filed. Ms. Amos replied that staff did not have a date on when the new tank was put in but that it occurred before the conditional use permit application was submitted. She explained that after the applicant had installed the poly water tank, Code Enforcement was contacted regarding the installation and relocation of the new tank. She noted that the Code Enforcement action provided the applicant with the two options of either putting the same kind of tank back in the same location or applying for a conditional use permit.

THE PUBLIC HEARING WAS OPENED.

Janny Rocha, applicant, indicated that she would answer some of the questions that had been raised before presenting her comments. She stated that the capacity of the old tank was about 10,000 gallons and that while the estimates she received from the well companies indicated that it would take 10,000 gallons to irrigate her property, she only replaced it with a 5,000-gallon tank. She noted that the new tank is actually smaller, shorter in height, and not as wide in diameter as the old tank because it is only half in size.

With respect to the question regarding the fence at the end of Diamond Court, Ms. Rocha stated that it was a solid fence and that there was vegetation in the area as well. She noted that from her bathroom window, she could see the neighbor in the driveway of that court, whereas she was not able to see them before the fence was removed.

Ms. Rocha then stated that as an architectural student at Berkeley, she learned that design is not arbitrary and that form follows function. She pointed out that the old water storage tank was a good example of this principle. She stated that the function of the tank is to store water and that it should logically be close to the source. She noted that she could have replaced the old tank in the same location and would not have needed a conditional use permit; however, it did not make sense to go through the expense of installing a new tank and pump without considering the issue of efficiency. She indicated that the old set up was not working, and she did not want to make the same mistake.

Ms. Rocha explained that she had two bids for the new tank, and both well specialists recommended placing the tank close to the well-head and pump. She added that she could have placed the tank on either side of the well-head and decided to place it where it would face the garage side of 455 Sycamore Road rather than on the drawing area side.

As regards the color of the tank, she noted that she had a few choices and that she chose green because it best blended in with the environment. She described that the old tank was made of wood and tension straps that needed constant maintenance; it had a cover on the top that was the access to the tank. She added that she found the tank unsafe because children could climb up to the top and fall into the tank. She noted that her property and 455 Sycamore Road were originally one property and that the previous owner had subdivided the property and made 455 Sycamore Road a flag-shaped lot, which meant it had no street presence or frontage and had a shared common entry and a long driveway. She continued that with a flag-shaped property, the owner would be surrounded and would have the view of your neighbor's back yard. She noted that she lost some privacy by virtue of her being in front of the flag lot with the long driveway, which is her sideyard, sometimes being utilized as a parking lot, having a view of big RV's, and being a speedway for motorcycles and sports cars. She noted that she used to live in a subdivision with neighbors living practically on top of one another, but they all got along and minded their own business.

Ms. Rocha indicated that all the neighbors she has talked to have complimented her on the work she had put into her property; however, she has received nothing but complaints from the neighbor that benefited most from the transformation. She stated that the property was in disrepair with overgrown vegetation, makeshift stables, and storage sheds showing signs of years of neglect. She added that there were two 20-foot by 40-foot accessory structures in the back that were structurally unsafe, as well as mounts of debris and scraps of wood piled high which created a home for rodents and pests. She noted that this was the view that the property owners at 455 Sycamore Road had to look at, but they were screened by the many mature oak trees along their "front yard." She added that she strategically planted 30 sequoia redwood trees as to provide even more screening. She continued that shortly after she had completed the cleanup and landscaping work, the owners of 455 Sycamore Road decided to remove all their trees, which now opened up their view into her backyard. She noted that she had no objection to their action since these were not her trees; however, she thought that before removing the trees, they should have considered what kind of view they would if they removed those trees. She stated that their property sits higher up than her property and that they would be able to see the tank no matter where it was placed on her property. She suggested that the neighbors plant the trees back so they would not have to view her property from their property. She noted that the staff report included photos taken from the interior and exterior of the house at 455 Sycamore Road that claimed that the property owners could see the tank from the front door, the front window, and the front yard. She stated that the front of that house originally faced Diamond Court and not her back yard, but they had decided to reorient the entire layout of their house after they purchased their house in 2005. She then made the correction that the neighbors can see the tank from the side of their house, adding that they did not buy a view property but a home on a flag lot.

Ms. Rocha noted that staff's analysis was that the water tank met and exceeded the development standards for the "A" zoning district. She added that people should expect to see in an "A" district certain things that belong in a farm such as a water storage tank, animals, and farm equipments, as opposed to living next to a park where one would see

play structures and hear kids screaming and dogs barking. She noted that people who have never lived in a country often have romantic ideals about living in the country with open space, wild life, animals, peacefulness, privacy, etc. which they want to enjoy, but they do not want to deal with the real things connected with having a farm such as unsightly objects, dirt, dust, manure odors, animals making noises, etc.

Ms. Rocha brought up the fact that the neighbors recently removed trees and bushes and installed a new gate and an open-view fence that overlooks the end of Diamond Court. She stated that she did not know if an open-view fence was allowed by the City of Pleasanton for that location. She expressed safety concerns about the type and method of construction of the fence as being at the end of the court, a drunk driver may run right through it and hit her fence and injure her animals; furthermore, it also opened up and exposed the rear part of her property to people driving into Diamond Court. Ms. Rocha noted that staff had mentioned that some residents on Diamond Court had complained about the water tank. She noted that the ranch existed before Diamond Court was developed and that it already had a tank, which these residents never notice or objected to until the old fence was removed. She stated that she would like to see the property owners at 455 Sycamore Road replace the fence with one that is approved by the City of Pleasanton and plant trees and bushes to screen those residents from looking into her property. She noted, finally, that her privacy, safety, and quiet enjoyment have all been violated and that it appears she cannot dig a hole or walk around in a swimsuit in her own backyard without getting a complaint from her neighbor or asking their permission. She noted that they suggested she move her water tank farther down; however, if she could satisfy them, she asked if she would be able to satisfy all the other neighbors as well. She questioned when everyone would stop complaining and try to coexist and requested the Commission to grant the conditional use permit for her tank as conditioned by Exhibit B of the staff report.

Commissioner Fox asked Ms. Rocha why she did not put the tank where the existing one used to be. Ms. Rocha replied that the location of the old tank was in the middle of the field and was a distance from the well-head and the pump. She added that the well specialists had told her that it would be more efficient to place the tank close to the well-head and the pump.

Commissioner Fox asked Ms. Rocha if she checked with her neighbors before deciding to move the tank. Ms. Rocha replied that she did not know that relocating the tank would cause a problem since there was an existing tank there before. She noted that she did not even know that she needed a permit until she received the notice of the complaint.

Commissioner Fox inquired from which part of the property the existing tank was set back 35 feet. Ms. Rocha replied that it was from the rear part of the fence. She then referred to the slide on the screen and pointed out the locations of the old and new tanks and of the well and the equipment. She noted that it took a lot of stress to pump water from the location of the old tank to the well-head, which was the reason the motor and pump broke down and had to be replaced.

In response to Commissioner Fox's inquiry if the water pump make noise, Ms. Decker replied that there is some noise associated with the pump. She indicated that she was not certain if the pump was above ground or within the chamber; Ms. Rocha replied that it there was a submersible pump in the ground and a pressure tank and that water was pumped from the ground into the tank. She added that the only time it would make some noise was when the water fell below a certain level and would begin to fill up and then stop once the tank was filled, similar to the system of a toilet bowl.

Commissioner Fox noted that a house remodel requires a building permit and inquired if the installation of the tank required a building permit as well. Ms. Amos replied that when the Building and Safety Division reviewed the application, it determined that the applicant did not need a building permit; only a conditional use permit was required.

Commissioner O'Connor indicated that he wanted to clarify the timing for the record and noted Ms. Rocha's statement that she planted sequoia redwood trees, that the trees in the rear were removed, and that the poly tank was installed. He asked Ms. Rocha if she has the approximate date for when the tank was put in, the redwood trees were planted, and the trees at 455 Sycamore Road were removed. Ms. Rocha replied that she did not know the date when the trees were removed; however, she indicated that the tank was installed around May or June of last year after she had completed the landscaping and was having problems with the water pressure, which was the reason she had the tank installed right away so she could irrigate the landscaping. She added that the redwood trees were planted immediately after because she wanted the extra screening for the area as it was wide open, and it was shortly after she had planted the trees that the neighbors chopped down the trees.

In response to Chair Blank's inquiry if Ms. Rocha had two places where she could put the poly tank, Ms. Rocha replied that she could place the tank either on the right or the left side and that she did not want to blatantly put it in front of somebody's house. Chair Blank inquired if it was her belief at that time that if she put the tank where it is, it would be less disruptive than on the other side. Ms. Rocha confirmed that was the case.

Commissioner Fox asked staff about different types of water tanks. She noted that the tank in question was a lot taller than it was wide and inquired if there were underground water tanks or elongated tanks that would be shorted and have a lower profile but would hold the same amount of water. Ms. Decker replied that tanks come in all shapes and sizes and materials but that in a use where a pump actually discharges and fills a tank, the pressure tank would typically be above-ground. She noted that it would not be the same tank that the City would put in, which is oftentimes half-submerged but are also above-ground, such as that in the Vineyard Avenue Specific Plan area. She explained that generally these tanks are purchased with the consideration of getting the smallest tank to meet the needs because of the cost issue.

Ms. Decker continued that she wanted to clarify a point to dispel any thought that the well, the casing, or the submersible pump, which were already located there, are part of this conditional use permit. She noted that the conditional use permit only refers to the

tank. She further clarified that, referring to the point raised by Commissioner Fox regarding why the tank was not replaced in the same location and of the same type, wooden tanks are no longer fabricated and that even if the poly tank were placed in the same location, it would still require a conditional use permit because it was not of the same type of material or size as the old tank.

Bill Hicks stated that he grew up in the Happy Valley area and has seen a lot of changes during the years, particularly with respect to new buildings and houses. He indicated that he was a plumber by trade and had done a lot of work in the area, including helping Ms. Rocha with upgrades in her house. He noted that if one actually saw the property prior to its purchase by Ms. Rocha, one would realize how much she has done to improve the site. He stated that Ms. Rocha tried to do as much as possible to be on everyone's side, but there is always conflict with change, and there comes a point when one neighbor will be happy but another will not.

Mr. Hicks noted that Ms. Rocha needs the water tank with the way the site is landscaped and that during the summer months, that tank would be drained out and would have to be refilled to provide daily watering to keep the landscaping as it is. He stated that Ms. Rocha got rid of a lot of rubble and things that should have been condemned a long time ago as they were unsafe conditions with rodents and other concerns. He indicated that he did not understand why the location of the tank was a big issue when the pump broke and had to be replaced. He noted that the photos taken of the tank were askewed to show the tank in more detail, but looking straight on, only a little bit of the tank is visible as the garage hides about 90 percent of it. He stated that some thought went into the placement of the tank, and for functionality, Ms. Rocha had followed the experts' recommendation.

Ms. Amos clarified that the staff report pictures that taken from the rear neighbor's property were done by staff and that some of the other pictures were provided by the applicant. She noted that the neighbor to the rear of the property did not provide any pictures taken from their property.

Frank Ziemer stated that he has lived in the area all his life and noted that Ms. Rocha had worked very hard on her place and made great improvements there. He indicated that the tank does not bother him and his family and that if it were moved back to where the old one was located, it would be more noticeable. He added that he did not notice the tank until somebody pointed it out. He stated that people should get behind Ms. Rocha and help her rather than hinder her. He noted that the Fire Department would be happy to have the tank in place for fire protection as the pressure of the City water line is not that strong.

Phillip Segundo stated that his main concern in this matter is the water tank and the view of the tank from his property. He noted that the tank is about 18 feet high and sits right outside his front door. With respect to the comment about the entry to his house being on one end, he explained that he has two entries to the house and that the side entry is now the front entry. He indicated that the tank is an eyesore that is visible from his home

frontage, his rear patio deck, his family room, his kitchen bar, and his front door. He noted that the tank could have been placed anywhere else on the over one-acre property and is visible from Diamond Court because Diamond Court is at a different grade. He added that 70 percent of the tank is visible from Diamond Court regardless of whether the fence at the end of the road is solid or open.

Mr. Segundo stated that the size of the tank is an overkill, given the amount of water needed to irrigate the property. He stated that he had no complaints about the property and agreed that it has improved greatly. He noted that he did have conversation with Ms. Rocha regarding the installation of the tank and suggested that she install a smaller unit which would be lower in profile and less in gallon in a more inconspicuous location rather than in front of his property. He added that he encouraged her to check with the City prior to installation if she needed a conditional use permit and that there were possibilities that other homeowners in Diamond Court may also have complaints about the tank. He noted that he contacted Ivan, the owner of Dan's Water and Well, who also did the work in his well, and discussed with him his input on the actual tank. He noted that Ivan stated that the cost to move the unit would not be a financial hardship because the base and foundation are rock rather than concrete, PVC pipes are fairly inexpensive to run pipe to actual tank, actual labor and trenching are minimal, and emptying the tank is basic and would be quick, simple, and safe with its current water load. He continued that Ivan mentioned that the distance from the well to the tank, whether two feet or 50 feet, made no difference and that while the pump had to be replaced, the leak in the old water storage tank could have been fixed and could still be useful with proper maintenance. He mentioned that he does not remember seeing the old tank although he owned his property prior to Ms. Rocha's purchase of her property. He stated that the tank is too big and leaving it at its current location is not an option, regardless of any type of trees planted, paint work done on the actual unit, or shrubbery put around the existing unit. He noted that he and a lot of Diamond Court homeowners would be happy if the tank were relocated, perhaps in the front yards of the neighbors who do not care about it and can live with it.

Cindy Caulk stated that Ms. Rocha has done a good job with her property and that the Segundos have had a problem with Ms. Rocha from the very start. She noted that Mr. Segundo constantly harassed Ms. Rocha after her husband died. She stated that the Segundos also have a water tank that is bigger than Ms. Rocha's tank and added that Mr. Segundo is exaggerating when he says that the tank sits outside his front door because it is located on the garage side.

Ms. Rocha stated that the new tank is half the size of the old one and is a lot shorter and smaller. She indicated that she has about 8,000 feet of sod to irrigate and that during the hot summer months, the landscaping has to be irrigated twice a day. She noted that the residents at Diamond Court did not have a problem with the tank until the fence was removed and exposed her yard. She stated that her privacy has been violated with the removal of the fence and that she felt like a zoo animal in her backyard with people walking and staring at her. She noted that she has driven on Diamond Court many times

before the fence was taken down and that she could see only a little part of the top of the tank, which is green and matches the top of the trees.

Ms. Rocha stated that she has never had any conversation with Mr. Segundo regarding the tank and that he has yelled at her from his backyard and commented about her trees being planted too closely together. She noted that she has been harassed and that she had to call the police because she felt threatened by Mr. Segundo. She stated that she did not want to cause any trouble and just wants to live on her property and be left alone.

With respect to Ivan, she noted that he was supposed to attend the meeting and speak on her behalf. She stated that she had another expert tell her to place the tank close to the well-head and that if Ivan had told her that it did not matter where she placed the tank, she would have put it where the neighbors wanted as her intention was to make everyone happy, screen everyone from view, and give herself some privacy as well. She noted that unfortunately, the Segundos decided to cut down the trees.

Ms. Rocha stated that moving the tank would create a financial hardship for her as she is a single mother who cannot work because of the harassment and issues she has to deal with from the Segundos. She noted that there was always something everyday from violation letters to complaints to the police about the barking dog, the smell of manure, and the flies. She stated that this is a farm property and there will always be horses and other farm issues. She concluded that this has to stop somewhere and that she did not know what she can do to make the neighbors happy.

Commissioner O'Connor noted that the old tank had a capacity of 10,000 gallons and asked Ms. Rocha what the capacity of the new tank was. Ms. Rocha replied that it was a 5,000-gallon tank. She added that the well company had written a proposal and recommended two 5,000-gallon tanks but she only installed one to determine if this would be sufficient so she can conserve water and save on the cost. She noted that a 5,000-gallon tank is adequate for the present.

Commissioner O'Connor noted that based on the staff report, he thinks staff believes that both tanks were of the same capacity. Ms. Amos explained that that information was based on the narrative received from the applicant that stated that the tanks were approximately the same size. She added that new information indicated that the old tank was larger.

THE PUBLIC HEARING WAS CLOSED.

Commissioner Olson inquired if staff ever talked to Dan's Water and Well. Ms. Amos said no as staff was not aware of the company until recently.

Commissioner Olson inquired what staff's opinion was with respect to the new open fence at the end of Diamond Court. Ms. Decker clarified that the question is if staff would support an open fence at the end of the cul-de-sac and if needed to go through a process. She noted that she was uncertain which PUD the end of Diamond Court may

pertain to but that when there is a development plan and an established approved fencing plan, a PUD modification is necessary when the fences are modified, at which time staff evaluates privacy issues, landscaping, and other matters. She stated that staff has not had the opportunity to evaluate if this particular PUD had an approved fencing plan and to evaluate privacy and visual aesthetics in terms of having landscaping on one side or the other of the fence which is typically required with developments.

Commissioner O'Connor inquired if the fence can be replaced without a permit if it were not over six feet tall. Ms. Decker replied that she as mentioned earlier, she does not know the history of the development in terms of whether or not it had an approved fencing plan. She added that if the fence would be a modification from what had been approved, then a PUD modification would be required. She added that it would probably be a staff-level process with a review of the change from solid to open fencing, landscaping or no landscaping, irrigation, and other issues.

Commissioner O'Connor inquired if a permit would be required if there is no approved fencing plan. Ms. Amos replied that the property falls within the provisions of the North Sycamore Specific Plan, which includes fencing requirements. She added that she did not look extensively into that matter.

Chair Blank noted that the fence is not the question of this application. Ms. Amos concurred.

Chair Blank noted that in the June 20, 2007 violation letter, an option given the applicant was to apply for a conditional use permit for the water tank which would cost \$150, would be reviewed by the Planning Commission, and would typically be a four-to-six-week process. He inquired why it took nine months to come before the Commission. Ms. Amos replied that the process would typically take four to six weeks if the information necessary to move the application forward was complete. She added that there were also site visits to be conducted by staff. She noted that this particular application was filed during the holiday season and there were vacation schedules that had to be taken into consideration.

Chair Blank noted that on page 9 of the staff report, it states that the water tank was a complementary earthtone color. He inquired if green was considered a complementary earthtone color. Ms. Amos acknowledged the error.

Commissioner Fox stated that this application reminded her of the fifth wheel hearing with a cylindrical object in place of a trailer. She noted that she grew up in a farm and was under the impression that if a water tank were to be replaced, it would have be much better to put it in the same location as the old one. She stated that she had a problem visually with the location as she was unsure the tank could be screened with redwood trees. She stated that she lived by Nielsen Park where there are redwood trees and noted that as redwoods grow taller, the trunks get very long and the evergreens stay at the top portion of the trees.

Commissioner Pearce commented that it always make her really sad when she sees neighbors engaging in hostilities like this. She stated that she understood where both sides are coming from. She noted, however, that this is a farm property and a lot of things come with it such as being near horses, getting flies and the odor from manure, and a water tank. She noted that there is no well expert present, but that given what the well expert said, the present location appears to be the most efficient. She pointed out that while the tank could be place five feet in either direction, the applicant took care to move it toward the garage. With respect to the neighbor's situation, she indicated that she would consider mitigation but the neighbors appear not to want mitigation since they cut down the trees that would have screened the tank.

Commissioner Olson stated that he initially thought that one of the possible mitigations would be to move the tank farther to the east so it is completely behind the garage. He noted, however, after driving down Diamond Court, that the tank would still be visible from Diamond Court. He added that it was unfortunate that the solid fence was removed. He stated that he was in a tough spot because moving the tank to mitigate the view for the neighbors to the rear would not solve the problem for the Diamond Court residents. He stated that after taking several trips to the Happy Valley area, he noted that the place is a farm country and that the decision to locate the tank as close to the wellhead as possible was one that was motivated by efficiency. He stated that in that respect, he did not think the tank should be moved.

Commissioner Narum agreed with Commissioner Pearce that it is a sad situation when neighbors are hostile towards one another. She noted that the property is zoned Agriculture which would include a farm and things like water tanks. She indicated that she is not quite as concerned about the Diamond Court residents as when they bought their houses at that location, they knew that it was agricultural land on the other side of the fence. She inquired if putting back the solid fence would make a difference. She indicated that she would be open to discussing some mitigation on this water tank, such as planting some large bushes on the back side, although she is questioning whether it was worth the effort since she did not think that was the answer to the problem. She stated that as a chemical engineer, she believes it would be most efficient to locate the tank as close to the pump as possible as the shorter distance would decrease the friction of the water to the pipe. She concluded that unless she heard some compelling reason about mitigation, she would grant the use permit and leave the tank where it is.

Commissioner O'Connor stated that he is also a bit conflicted. He noted that if the application came before the Commission before the tank was installed, there would have been more opportunity to resolve some of the issues. He stated that he was not sure moving the tank 20 or 30 feet behind the garage would have been a big issue; however, considering the timing of when the tank was installed, the older photographs and what he saw when he was at the site, and the removal of the trees, he noted that it could have been better screened if some of the existing vegetation had been left in place.

In response to Commissioner Fox's comments about the growth of the redwood trees, he stated that his brother has some redwood trees and that he would trim theirs trees up to

give them space underneath the tree. He stated that he was not a tree expert and did not know how much vegetation there would be toward the ground if the trees were not trimmed and were allowed to fill in. He added that if the case were really that the trees were going to be off the ground, there were several types of shrubs that could be planted to screen the tank; however, he stated that he did not know if the applicant or the rear neighbor should be responsible for planting those shrubs. He noted that this was an agriculturally zoned area and that the applicants had met all the setback requirements.

Chair Blank noted that historically, the Planning Commission has taken a firm line on projects that applicants work on without permits. He expressed, however, that he was sympathetic with someone who says that she had to replace an old water tank, consulted with a contractor, and relied on the contractor to inform her of the requirement for a City permit. He noted that he was surprised by the mass of the water tank as well as its color. He stated that, like Commissioner Olson, he drove down Diamond Court and wondered what it would have been like if the fence had been solid because the tank would not have been quite as visible. He noted that the redwood trees are too small and would not provide any screening either. He further noted that the site is zone Agriculture.

Chair Blank stated that mitigation such as additional landscaping, painting the tank a natural earthtone color, or installing some lattice work around the tank might help the situation and that he could support leaving the tank at its current location with the right mitigation measures in place. He added that he is sensitive to the issue of efficiency and could understand why the applicant installed the tank at its location. He noted that this case is troubling because it involves one neighbor against another.

Commissioner Fox stated that the North Sycamore Specific Plan and the Happy Valley Specific Plan talk about agriculture. She noted that there are design guidelines in place to ensure that the agricultural character of the area is preserved.

Chair Blank noted that the old tank looked “farm-y” but that the new tank does not. Commissioner Pearce commented that the new tank does not look like an old farm but like a new farm.

Commissioner Fox noted that the tank did not aesthetically fit on the site. She stated that she could not see leaving it the way it is without any mitigation or screening because it does not blend into the surrounding neighborhood.

Chair Blank stated that he believed there is a way to mitigate it so it blends into the surrounding neighborhood.

Commissioner Olson noted that the color could be brown rather than green.

Commissioner Pearce noted that she would be glad to discuss mitigation but would not like to spend a lot of time on mitigation that the neighbors do not want. Commissioner Olson agreed.

Commissioner O'Connor noted that the applicant submitted a list of mitigation measures she was willing to undertake, which included painting the tank or putting up a structure around it. He added, however, that he did not think those measures were amenable to the neighbor.

**Commissioner Pearce moved to make the required conditional use permit findings as listed in the staff report and to approve PCUP-205, subject to the conditions of approval as listed on Exhibit B of the staff report.
Commissioner Olson seconded the motion.**

Commissioner Fox indicated that she would not support the motion.

Commissioner Pearce stated that she was willing to consider changing the color because that is the one mitigation that the neighbors did not dismiss.

Chair Blank noted that here are two neighbors who do not get along because one neighbor took the shrubs out, but the applicant is willing to put some shrubs in. He stated that he thinks the applicant should be encouraged to perform all the mitigations and that planting shrubs and painting the tank are acceptable to him.

Commissioner Fox stated that she thinks the tank is too big and needs to be screened. She added that she would like to see it covered on four sides with lattice.

Chair Blank stated that the applicant is proposing to install a wall on one side to screen the tank. Commissioner Fox stated that she would like the tank screened from Diamond Court as well.

Chair Blank stated that he did not think it was the applicant's fault that the Diamond Court fence was replaced and that he felt that requiring the applicant to screen the tank from Diamond Court is equivalent to punishing the applicant because somebody replaced the solid fence with an open fence.

Commissioner Fox stated that if the Commission were considering this use permit without any work having been done previously as in the case of the sprung structure for the Presbyterian Church on Valley Avenue and Busch Road, the Commission would have considered the property placement to make sure it was properly screened and was right in the neighborhood rather than looking out someone's door.

Chair Blank stated that this site is zoned agriculture and would have a different standard than the environment of the sprung structure which is surrounded by houses and people.

Chair Fox noted that there have been other agriculturally zoned properties such as the St. Elizabeth Seton Church where the Commission ensured that the location of the heating and air-conditioning units for the expansion were away from the neighbors.

Chair Blank noted that the site in question is and open agriculture, unlike that of the St. Elizabeth Seton Church property.

Commissioner Narum stated that she did not support installing any structure around the tank and that if the Commission wanted the applicant to do that, the structure should look like a barn to keep in line so it blends with the agricultural character of the site.

Chair Blank noted that planting bushes and painting the tank would blend in with agriculture.

Commissioner Narum stated that she did not want to make the determination of what color would blend in with the site because a color that might blend in her opinion may not appear to be so to someone else. She recalled that for the Sarich property, the Commission went through visual analysis and planting bushes on-site. She suggested that 25-gallon bushes on the back side might screen the tank, including the view from Diamond Court. She added that with respect to screening from Diamond Court, she did not think the applicant should be punished for something over which she had no control. She reiterated that she would not support building a structure around the tank unless it looked like a barn.

Chair Blank inquired if the color of the paint could be left to the discretion of the Director of Planning and Community Development.

Ms. Decker noted that the typical colors of City tanks that have gone up include Pleasanton green, which is more or less the same color as the tank; beige, which is meant to fade into the beige landscape when summertime comes; and a lighter sage color that fades off like the tank on Bonde Ranch. She noted that staff has had discussions with respect to brown colors, and those were not typically done, although the applicant is willing to do so only because it absorbs the heat from sun as it stands in the open.

Ms. Decker stated that using materials other than planting for screening sometimes makes something that is not so visible much more visible with the addition of fencing, lattice, or other structures. With respect to mitigation with 25-gallon shrubs, she noted that the largest shrubs are 15 gallons, which is a tree size. She noted that shrubs generally establish better five gallons. She added that if mitigation were being considered by the Commission, she would like to suggest language such as "The applicant shall consider planting shrubs to screen the tank with such plantings that would be not be harmful to the health of the stock, subject to the review and approval of the Director of Planning and Community Development."

Commissioner O'Connor commented that as a former painting contractor, although the tank could be painted with the proper type of painting preparation, these tanks are meant to be low maintenance and do not need to be painted. He stated that applying paint would result in ongoing maintenance issues, and if the tank were not property maintained, the paint could crack and peel through the years.

Chair Blank noted that when he had things painted, with the proper preparation of the surface, to the right kind of painting on the surface, the paint could last for a long time with low maintenance.

Commissioner O'Connor stated that his comment was meant to call the Commission's attention to the maintenance issue. He added that he did not think painting the tank brown as mentioned by Ms. Decker would be a big improvement.

In response to Ms. Decker comment about 25-gallon bushes not being available, Commissioner Narum commented that she thought that the plants specified for the Sarich property were 60 gallons in size.

Ms. Decker clarified that those were box sizes. She stated that trees generally come in one-, five-, 15-, 24-, and 36-inch boxes. She added that trees that come in the 24-inch box had a trunk diameter of 1 to 1 ½ inches, with the trunk getting larger as the box gets larger. She noted that the larger the plant material installed, the longer it takes to establish the root system; the younger variety would a little bit more quickly and would catch up within a year or so. She further stated that the applicant had expressed concern not only about the cost for putting in appropriate size shrubs or shrub materials but also the fact that stock is in the field and that there is very small range of materials that would not be harmful to the stock. Ms. Decker proposed that the Commission not specify the type of shrubs at this time so that staff may be able to work with the applicant on what would be best for the site.

Chair Blank proposed an amendment to the motion to adopt the language proposed by Ms. Decker in terms of planting the shrubbery around the tank.

Chair Blank inquired if the Commission supported having the tank painted. Commissioner Pearce replied that it would depend on the paint options. Chair Blank proposed that the color be determined by the Director of Planning and Community Development.

Ms. Decker stated that staff would prefer to have the Commission decide on the color as the color chosen by the Director may not be acceptable to many neighbors. She noted that with sensitive subjects such as this, the Commission should take the lead and determine the color that is best suited for the site, following the presentation and discussions held.

Commissioner Pearce inquired if the matter would come back to the Commission if color were chosen and then it turns out that the tank cannot be painted that color. Ms. Decker replied that she believed with appropriate preparation, the tank could be painted any color chosen by the Commission. She noted that the colors she mentioned were the colors of existing tanks in the City, but it does not preclude the Commission from choosing any other color.

Chair Blank noted that beige seems to be the appropriate color as there is not a lot of green in that property.

Commissioner Pearce noted that she would like to go darker, such as chocolate brown, but that she was not sure that it would be better than green.

Commissioners Narum indicated that she was a bit leery about painting the tank. Commissioner Olson indicated that he felt the same way.

Chair Blank noted that there did not seem to be sufficient support to paint the tank.

ROLL CALL VOTE:

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

NOES: Commissioner Fox.

ABSTAIN: None.

RECUSED: None.

ABSENT: None.

Resolution No. PC-2008-16 approving PCUP-205 was entered and adopted as motioned.

Chair Blank informed the applicant and the neighbors that they have 15 days to appeal this decision to the City Council.

A recess was called at 8:45 p.m.

Chair Blank reconvened the meeting at 9:53 p.m.

b. PUD-99-01-05M, Steven and Suzanne Spencer

Application for a major modification to an approved Planned Unit Development (PUD) development plan to reduce the rear yard setback from the required 20 feet to 5 feet and the side yard setback from the required 10 feet to 5 feet for a pool in the rear yard of the existing residence located at 8031 Oak Creek Drive. Zoning for the property is PUD-R/LDR (Planned Unit Development – Rural/Low Density Residential) District.

Ms. Amos summarized the staff report and described the background, scope, and layout of the proposed project.

Commissioner Olson inquired if there were any global requirements in this development relating to the four options presented. Ms. Amos replied that Condition No. 3 of Exhibit B includes Condition No. 8 of PUD-99-01, which shows the current standard developments (struck text) and the proposed modifications for the options (highlighted text). She explained that for the most part, Lot 8 would follow the standards for Lots 3-9,

11, and 12, which require 10-foot side yard and 20-foot rear yard setbacks for all Class I and Class II accessory structures.

Commissioner Narum requested confirmation of her understanding that the distance between the Besso house to the property line is 20 feet and an additional five feet to the edge of the pool. She inquired what the distance was from the bottom edge of the pool to the Spencer house. Ms. Amos replied that it was 29.9 feet. Commissioner Narum then inquired what the distance would be from Spencer house to the pool if it were shifted downward and staying outside of the 20-foot setback. Ms. Amos replied that it was approximately 15 feet.

In response to Chair Blank's inquiry if it was the Bessos who requested that the spa be moved, Ms. Amos said yes. She added that the spa was part of the pool, and the request was to flip the design of the pool such that the location of the spa would mirror the Bessos' spa on the other side of the fence to provide more privacy. Ms. Amos indicated that staff does not have a preference with respect to the location of the spa.

Chair Blank observed that it would appear there would be less privacy if people use the spas at the same time.

Commissioner Fox disclosed that she had met with the applicant.

Commissioner Pearce disclosed that she had met with the applicant and with Mrs. Besso.

Commissioner Olson disclosed that he had met with the applicant.

Commissioner Narum disclosed that she had met with the applicant and with Mr. and Mrs. Besso.

Commissioner O'Connor disclosed that he had met with Mrs. Spencer and with Mrs. Besso.

THE PUBLIC HEARING WAS OPENED.

Steven Spencer, applicant, apologized that he was bringing before the Commission another sad tale about two neighbors who cannot agree. He pointed out that he has tried to follow all the rules and regulations. He stated that he was on the Architectural Control Committee (ACC) Board of his homeowners association and that he had to abstain when it came to the consideration of his pool. He noted that the ACC took everything into consideration and that one of the Board members asked if he talked to his neighbors about the pool and if there were any objections raised. Mr. Spencer noted that he had talked to his neighbors and that no one had presented any objections. He stated that at that point, the ACC approved the pool, after which he submitted his application for a PUD modification.

Mr. Spencer stated that a wooden fence is in place between his house and the Bessos' house and that the Bessos have a water feature that is against the fence on one end of the fence line and a spa on the other end. He indicated that he wants to be able to utilize his yard as well and to move the pool to enable him to get the maximum enjoyment and enhancement of his property. He stated that he was very surprised to hear about the Bessos' objection and subsequently met with staff about what the next steps might be. He noted that it was at that point that staff suggested to spearhead a global modification for setbacks for the entire PUD. He stated that he looked at the new homes that face the freeway off of Bernal Avenue and noted that the swimming pools in the model homes were set back two to three feet from fence. He added that the Bessos have a very narrow backyard and suggested that neighbors with very narrow backyards be allowed a two-foot setback so they can utilize their backyards as much as they can. He added that there were questionable structures that have been put up in the neighborhood, and this was an attempt to clean up the neighborhood and let everybody enjoy their backyard as much as they wanted.

Mr. Spencer stated that after several months, it became apparent that he and the Bessos could not arrive at a compromise. With respect to noise mitigation, he noted that from their house and with their windows open, he could hear every word the Bessos say when they are using their spa, as well as the noise coming from the spa and the rushing water. He pointed out that they do not live in a retirement community but in a neighborhood where there are children, neighbors, and barbeque parties. He told the Commission that all he wanted was the quiet enjoyment of his home and requested that the Commission grant him the five-foot rear and side yard setbacks as it does not do harm to anybody.

Chair Blank noted that there is a reference in the staff report that both parties have expressed initial interest in mediation and that since the item was now before the Commission, he took it that the mediation did not occur. Mr. Spencer stated that he had asked many times for mediation, but the neighbors had put on some conditions and so it did not occur. He indicated that he had gone to his neighbor to try and work things out, but he was asked to leave and there were no further conversation. He noted that because the mediation process was not going anywhere, he decided to go it alone and put in his application.

Chair Blank asked Mr. Spencer if he would be open to mediation if it were still an option. Mr. Spencer said that he would not at this point. He explained that there is a lot of history and ill-feeling in the neighborhood. He noted that there had been enough time and opportunity to do that and would rather leave the decision in the Commission's hands. He added that he is not harming anyone by moving his pool.

Terry Besso expressed his thanks to the Planning staff for a very comprehensive report and to the Commissioners who visited his property. He stated that he agreed to accept mediation when it was offered and that he had offered to pay for half of the mediation expenses. He noted that he and his wife do not have a problem with the mediation process, but he could not accept mediation under the conditions offered by Mr. Spencer.

Mr. Besso stated that Mr. Spencer is asking for a five-foot setback from the fence for his pool, his in-ground hot tub, and a four-foot high water fall. He noted that this would put Mr. Spencer's pool 30 feet from Mr. Spencer's back door but only 20 feet from his own. He added that his property line from his back door to the fence line is only 15 feet, and his main entertainment area would be five feet directly opposite from Mr. Spencer's pool and hot tub. He indicated that what he is requesting is that the setback from the fence be moved back ten feet instead of five, which would put the pool 25 feet from Mr. Spencer's house and give him a 20-foot space from his house to the Mr. Spencer's pool. He added that even with this setback, the Spencer pool would be closer to his house than to the Spencer's house. He questioned why he should be subject to having Mr. Spencer's pool 20 feet from his back door when Mr. Spencer does not wish to have his own pool 15 feet from his back door. He stated that in addition to moving the pool ten feet from the property line, he is also requesting that there be proper drainage and a retaining wall built next to the fence for irrigation purposes and so rain does not come back into their backyard after the pool is put in, as their property is four feet lower than the Spencer's property line. He further requested that the four-foot high water fall which would sit across from their master bedroom be toned down so the noise is kept to a minimum. Lastly, he proposed that the in-ground spa be moved not on the opposite side of his own spa but kitty corner from Mr. Spencer's yard and closer to his house and to the yard of the neighbor at 8015 Oak Creek, which would be that neighbor's side yard. He said that this location would allow that neighbor continued privacy coming out of his home. He added that this would put Mr. Spencer's spa farther away from his spa and at the same time, would not interfere with the neighbors' enjoyment of their back yard. He then thanked the Commission for its consideration.

Commissioner Fox asked Mr. Besso to point out his spa on the displayed map. Mr. Besso pointed out his spa and indicated that it was actually located opposite 8015 Oak Creek Drive. Commissioner Fox inquired how many feet his spa was from the property line. Mr. Besso replied that the distance was about six feet. Commissioner Fox asked staff what the setback requirements were for the spa in this development and if a spa were a Class I or Class II structure. Ms. Amos replied that she was not certain what Class category an above-ground spa might be but that in-ground spas are typically required to be set back five feet from the rear property line and three feet from the side property line. Commissioner Fox inquired if the location of the Besso spa was within the setback requirements. Ms. Decker noted that if the Besso spa is considered a portable spa, it would be exempt from setback requirements. Mr. Besso clarified that his spa was considered a portable spa and was exempt.

Commissioner Olson requested clarification from Mr. Besso that under Point No. 2, Condition No. 2, he would pay for the improvement related to the retaining wall.

Mr. Besso noted the Mr. Spencer's pool is five feet from the wall, and the berm wall is approximately one foot thick and with two feet above the ground, the water features would put Mr. Spencer's property six feet above Mr. Besso's property line. He expressed concern that if Mr. Spencer puts landscaping behind the berm wall, it would go down two

feet into the ground and the soil would hit the fence and rot it up within a short period of time.

Commissioner Olson inquired if the fence is now on the soil. Mr. Besso replied that the batter-boards are on the soil but the fence is above the soil.

Commissioner Narum asked Mr. Besso to point out on the diagram where he proposed to have Mr. Spencer's hot tub relocated. Mr. Besso pointed to the proposed location noting the proximity of the spa to the door of his entertainment area. He noted moving the spa would get it away from his house and the next door neighbors' entertainment area and would put the spa closer to the Spencers and give them more privacy.

Chair Blank requested clarification from Mr. Besso that from his perspective, moving the pool five feet toward the Spencer's house would be an acceptable compromise and that he was not asking for a 15-foot or 20-foot setback. Mr. Besso said he would be comfortable with a 10-foot setback as well as having the spa moved.

Mr. Kee Yun Hwang, attorney representing Mr. Spencer, stated that some of the issues raised by the Commission have already been addressed by the ACC. He explained that this matter came before the ACC in June or July of the past year, which is approximately ten months ago. He stated that the Spencers submitted their pool plans, and based on that submittal, the ACC visited all the neighbors, consulted with some of the experts, and decided that the Spencers' request was satisfactory and approved the plan. He added that since that approval date of June 12, 2007, the Spencers have communicated on a regular basis with Planning staff. He noted that on one of those conversations, the issue of global modification to reconsider setback requirements arose because houses in the development were built too large and the yards were too small, making some of the current setback requirements infeasible for some of the homes in the subdivision. He stated that the Spencers' request is reasonable and that after speaking with the neighbors, the ACC approved the specifications based on the factors the Commission was considering at this present time. He stated that the ACC should be deferred to because it was there, the members had the opportunity to speak with the Spencers and all the neighbors, including the Bessos, and there were no objections raised at that time. He noted that when the Spencers first filed the application for their modification setback, the Bessos raised their objection based on the noise level. He indicated that he did not understand the noise issue since what the Bessos are asking for is to have the Spencers move their spa closer to where the Bessos' spa is. With respect to privacy reasons, Mr. Hwang noted that there is no visibility with respect to whether the Spencers could see the Bessos or vice versa. He noted that the Spencer property is approximately three to four feet above the Besso property and that the photo shows that above the fence, the Bessos' roof is what is visible from the Spencer's home while the second story of the Spencer's home that is visible from the Bessos' home. He indicated that there are no privacy or noise issues in question. He added that this issue has been ongoing since May 2007, now 11 months since the initial application. He stated that the Spencers respectfully request that the Commission approve the modification request.

Mr. Spencer stated that his trade is construction and development and that he thoroughly interviewed his pool contractors, particularly on how to protect the common fence between him and his neighbor. He explained that the dry stakes are first put in the ground followed by the batter-boards. He added that the dirt would not slump up against the fence and damage it. Mr. Spencer stated that he has not reached the permit stage yet and that there are engineering questions that will be addressed once he gets to the permit stage, including the Bessos' concerns about the stability of the fence. He stated that he has always been willing to go to mediation but there were always reasons why they couldn't mediate. He noted that this has been going on for a year and they have not had the chance to enjoy their home. He stated that with respect to the location of their spa, they will not harm the Bessos in any way. He added he did not choose an automatic system where the pool would be automatically refilled if the water goes below a certain level because if there were a leak, the pump would be running and filling the pool all the time and they would not know it.

Commissioner O'Connor noted that when he spoke to Mrs. Spencer about the wall on the back of the pool, she mentioned that it would be 24 inches and that the dirt behind that wall was not going to come up the wall. Mr. Spencer agreed that it was going to be only two feet for the raised planter in order to get some plants at the back. Commissioner O'Connor requested confirmation that from looking at the drawings, it appears that there would be a two-foot high wall on the back of the pool indicating that no one would be able to go to the back side of the pool, that the dirt behind the two-foot high wall would be two feet down, and that the Spencers were going to plant downward. Mr. Spencer replied that he would not plant all the way up but that they have to be raised and given some dirt. He added that he would capture the runoff of the water and put in the irrigation systems he would need, which would drain the area properly and would not get into the Bessos' yard.

Commissioner O'Connor expressed concern that if dirt were put up to the two-foot high wall and it tapers to the back, the drainage would go to the back rather than to the side and the front. Mr. Spencer replied that that is the reason the batter-board would be in front and the dirt would slope back against the wall. Commissioner O'Connor asked Mr. Spencer if he was planning on building the batter-board up against the back of the fence and backfill it with dirt. Mr. Spencer replied that the batter-board would be built up against the common wall and then the dirt would be placed a little bit to the back toward his property, where the drainage would be picked up so that it does not drain back into the Bessos' yard. He reiterated that the plan is just for the Planning Commission and does not include the engineering plans.

Commissioner O'Connor indicated that he understood Mr. Spencer's explanation but that he would be concerned if the masonry wall were put in front with only wood at back to control the water. He indicated that he would not be able to support that. Mr. Spencer stated that the batter-board would hold the dirt in and would not go up to 12 inches and create a slope of dirt that would go back toward that wall where the drain would be. He added that if he put it flat, water runoff may be directed onto the Bessos' property.

THE PUBLIC HEARING WAS CLOSED.

Commissioner Olson indicated that he had the same concern expressed earlier by Commissioner O'Connor. He asked staff if there were procedures in place where inspections would occur relative to the drainage situation behind the pool and behind the wall on that part of the pool and fenceline as the project goes forward. Ms. Decker replied that under the pre-existing PUD approvals, there are standard conditions that all on-site drainage is to remain on-site or flow to the street. She explained that a grading plan would need to be provided, reviewed, and approved by the Building and Safety Division as well as the Planning Division. She added that when the applicants obtain their building permits for the pool and the landscape, the plans would be reviewed by both Building and Planning, and staff would look for solutions that would provide positive drainage.

Ms. Decker acknowledged the concern expressed by the Commission and the Bessos regarding drainage from the northerly portion in the five-foot area of the pool toward the Besso property. She noted that there are different types of retaining walls that can be constructed, including batter-board, masonry, and wood retaining walls treated with water-proofing. She stated that the issue would be that there be positive drainage to the south from the rear yard area around the pool and to the site and not onto the Besso property. She added that the drainage would be looked at in general as the pool is filled in, water may sometimes be discharged onto the yard area, as well as overflow from rain water.

Commissioner Olson noted that this concern would still be present whether the setback would be five or ten feet.

Chair Blank inquired what would happen if the drainage does not work correctly and if Code Enforcement would have to come in. Ms. Decker explained that after the plans are reviewed and approved, various inspections would take place, including pool, electrical, and landscaping. She noted that a final inspection would be done by a staff planner to make sure that the trees and landscaping reflect the approved plans. She added that assuming the drainage was not constructed according to the approved plan, and there were failure in terms of drainage, there were no positive drainage, and there were negative impacts on the neighboring properties, Code Enforcement would step in. In response to Chair Blank's inquiry if the inspections would not catch this, Ms. Decker replied that generally speaking, that would be the case; however, when there is fine grading, drainage issues may occur.

Chair Blank stated that the reason he is asking is because he moved to a brand new home in the mid-90's and had major drainage issues, even though there was a drainage plan.

Commissioner Narum stated that this was another tough case where there is no clear solution that would make everyone happy. She indicated that she would support a five-foot side yard setback but with respect to the rear yard, she cannot support a situation that would put the edge of the north side of the pool closer to the neighbors' house than

the south edge to the applicants' house. She indicated that she would support a ten-foot rear yard setback. She added that the pool design is an individual issue and that the Commission should not be designing what it will look like. She stated that she wonders if a compromise could be reached with flipping the pool design to relocate the spa and allowing the five-foot setback between the neighbors. She inquired if these are standard conditions of approval.

Ms. Amos replied that Condition No. 2 of Exhibit B states that all the conditions of approval of PUD-99-01 through PUD-99-01-04M would apply to this modification.

Commissioner Narum inquired if drainage is part of Exhibit A in Condition No. 1 of Exhibit B. Ms. Amos replied that Exhibit A would not necessarily include a drainage plan but that a drainage plan was approved for the Lemoine approval. She added that a new drainage plan would be in place when the applicants come in for their building permits.

Commissioner Pearce agreed with Commissioner Narum that neighborhood issues are tough. She stated that her best neighborhood compromise is one that gives everyone a little bit and does not make anyone happy. She indicated that she would support a ten-foot rear setback, which would cause some issues for the Spencers with respect to their patio but would put the pool closer to the Spencers' house than the Bessos'. She stated that she cannot get to the point of moving around the structures on the applicants' property. She added that she was comfortable with the planting that was in place and with staff's explanation of the grading plan through the Building permit process.

Commissioner O'Connor concurred with Commissioners Narum and Pearce in terms of a five-foot side yard setback and a ten-foot rear yard setback, particularly since the rear neighbor is amenable to the ten-foot setback. He added that he would not like to alter the design of the pool layout.

Commissioner Fox indicated that she would have supported the original request of a five-foot setback for both the side and rear yards but that she would go along with the ten feet. She noted that this would be a structure that would not be seen over the fence, unlike a structure that might have a visual difference if the setback were either five feet or ten feet. She added that she did not believe noise would make any difference either. With respect to the issue of the pool being closer to one back door versus the other; she noted that the fact is the applicant has a larger backyard than the next-door neighbor. She added that the homeowners association supported it as well.

Chair Blank stated that he took a quick look at the conditions of approval for the project and did not see a requirement for the grading and drainage plan or for the irrigation or swimming pool runoff. Ms. Decker noted that this is not the first time that the Commission has requested clarification of conditions for a PUD modification, and she suggested that the grading, drainage, and irrigation plans be considered by the Commission. She stated that a condition of approval can certainly be added requiring that a drainage and grading plan be submitted prior to the issuance of a building permit.

Ms. Decker also requested the Commission to make a determination on whether it prefers a wood or masonry retaining wall and if it desired to leave the review of the drainage and grading plan to the Building and Safety Division and the Engineering Department.

Chair Blank suggested that a drainage and grading plan be required and that the retaining wall material be subject to the review and approval of the Building and Safety Division. He indicated that he was surprised by the amount of space desired by the applicant between the house and the pool and that he would like to see more of setback; however, he would support the ten-foot rear yard setback especially since the Bessos were amenable to it. He indicated that he agreed with the majority of the Commission with respect to a ten-foot setback for the hot tub. He noted that the decision would not make everyone happy but that this was part of trying to figure out the best way to work through this.

Commissioner Pearce moved to recommend approval to the City Council of Case PUD-99-01-05M, subject to the conditions of approval as listed in Exhibit B of the staff report with the modifications that Condition No. 3 include the language for Option 2 regarding reducing the side yard setback from ten feet to five feet and the rear yard setback from 20 feet to 10 feet and the addition of a condition that the applicant submit a drainage and grading plan prior to the issuance of a building permit.

Ms. Decker proposed the following language for the new condition as follows: “The applicant shall submit a grading and drainage plan that provides detailed information regarding materials to be used to retain and provide positive drainage, subject to the review and approval of the Director of Planning and Community Development prior to the issuance of a building permit.”

Commissioner Fox seconded the motion.

ROLL CALL VOTE:

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

Resolution No. PC-2008-17 recommending approval to the City Council of Case PUD-99-01-05M was entered and adopted as motioned.

Ms. Decker noted that as a major modification, this item would automatically come before the City Council and that no appeal was required.

7. MATTERS INITIATED BY COMMISSION MEMBERS

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

Overhead Projector

Chair Blank stated that he would like to follow up on the instructions on how to operate the overhead projector. Ms. Decker apologized for the delay and indicated that she would have it in place at the next meeting.

Automatic Sprinkler Ordinance

Chair Blank noted that a house just off of Hopyard Road recently caught fire and in a lengthy discussion with the Fire Chief, he was informed the had that house been sprinklered, the \$325,000-\$375,000 worth of damage would have been much less at \$2,000-\$4,000. He stated that the fire started from the dryer in the garage and a sprinkler system would have prevented the fire from spreading to the main house. He encouraged staff to bring the sprinkler ordinance before the City Council as soon as possible.

Hacienda Housing

Commissioner Pearce noted that there is a proposal for an upcoming City Council Workshop regarding some tentative proposals for residences in Hacienda Business Park. She stated that she had spoken with Mr. Fialho to inquire if this could be a joint City Council-Planning Commission workshop, to which Mr. Fialho was amenable. She asked the Commissioners if there was consensus to be part of this discussion. Commissioner Olson stated that he had the same reaction as Commissioner Pearce.

There was consensus among the Commissioners to participate in the workshop.

Green Building Points

Commissioner Pearce noted that after watching the Sarich discussion during the City Council meeting, it occurred to her that the Green Building Ordinance could be amended to make the green building requirements proportional to the size of one's house. She inquired if the Commission would support the discussion of this amendment. The Commissioners unanimously supported the proposal.

Hillside Preservation Ordinance

Commissioner Fox noted that Mr. Fialho was planning to go to the City Council with a draft Hillside Preservation Ordinance in April or May of this year and inquired if that should not come before the Planning Commission first. Ms. Decker replied that this is an information report requesting the Council to provide direction with respect to discussion based on limiting hillside construction. She added that no action would be taken on this

report and that the ordinance would come before the Commission for consideration and subsequent recommendation to Council.

Commissioner Fox noted that a few years back, the Planning Commission had discussed agendizing discussion along these lines. Ms. Decker replied that this discussion first occurred when the General Plan was considering some language limiting development on 25 percent grading slopes in Public Health and Safety districts. She noted that the Council reviewed and made recommendations on the subject but did not adopt any particular language changes with regard to limiting construction within those areas. She added that the discussion was followed by a variety of projects, including the Oak Grove project that included both the Council and the Commission, followed by the Initiative. She stated that the Council is considering the topic again at this time.

Commissioner Fox inquired if staff could look into the Pleasanton Ridgeland Initiative that was adopted in the 1990's, which, she understood was no longer valid because a Court of Appeals judge threw it out. Ms. Decker indicated that she was not familiar with it. Ms. Harryman stated she would look into it.

8. MATTERS FOR COMMISSION'S REVIEW/ACTION

a. Future Planning Calendar

Staples Ranch Projects

Ms. Decker informed the Commission that beginning with the April 23rd packet, an outline of the Planning Commission meeting schedule for Staples Ranch would be included in the packet. She further informed the Commission that when Staples Ranch comes before the Commission at its regular meetings, Staples Ranch items would be the only item(s) on the agenda. She noted that in that respect, the Commission will have to meet on other dates to conduct its regular business. She requested the Commissioners to check their calendars for special meeting dates on May 21st and June 26th.

Commissioner O'Connor stated that he noticed there were two items in last meeting's Future Planning Calendar, PV-128/PDR-470 at 287 Old Bernal Avenue and PCUP-176, 326 St. Mary Street, that were no longer on the list. Ms. Decker replied that both projects have not been withdrawn but are at a standstill, and staff does not know at this point when it might come forward. She noted that the project on Old Bernal Avenue is going through some design modification across the street and has a high FAR. She added that the project on St. Mary Street was a proposal for a use permit for the second floor.

Commissioner Fox commented that she believed there was a condition of approval put on the property at St. Mary Street regarding the time the patio should close at night. Ms. Decker clarified that the condition was for the first floor, and this application is for the second floor. Commissioner O'Connor inquired if the operator on the second floor would be the same as that on the first floor. Ms. Decker said it would be a different person.

Motor Home and Wild Exotic Animal Ordinances

Commissioner O'Connor stated that he has not seen the motorhome or wild exotic animal ordinance amendments which the Commission had previously brought up. Ms. Decker replied that there were two issues that came before the Commission with respect to motorhomes: the first referred to RVs parked on the streets which is being handled by Code Enforcement, and the second was the Berrigan case which the Commission denied regarding trailers without motors parked in sideyards. She added that staff is still researching what issues are citywide and is taking longer than what staff had hoped. She noted that two applications have been withdrawn for the reason that staff does not support having RVs parked on sideyard setbacks. She indicated that once the research is completed, staff will return to the Commission with an information report.

Wednesday Packets

Chair Blank thanked staff for its effort and work at getting the staff reports to the Commission on Wednesday.

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

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

Planners Institute and Mini Expo

Commissioner Olson indicated that there were some great topics that he could not go to because they ran concurrently with other sessions he attended. He summarized the sessions attended:

Real Estate Economics 101

- A project is feasible if the face value is greater than the cost of project plus the entrepreneur's profit.
- The residual value of the land is equal to the finished value of the project less the entrepreneur's profit.
- Planning Commissions are beginning to consider the economics of development projects when they make land use decisions.
- If you reason for higher density, which is up-zoning, the greater the number of units per acre, the higher the cost of the project, but the residual land value also increases. This runs the risk of creating speculation in the market relative to that land unless the developer is told upfront what public benefits or exactions are expected from that land use. The exactions have to be based on the impact on the community and not on the need, as if it based on the need, there is the risk of being sued by the developer under California law.

Transit-Oriented Development

- One of the speaker was the Downtown Development Coordinator for Redwood City
- Form-based code is used to establish how the Downtown should look. Pictures of general architecture are provided so the developer knows what is going in and what is to be expected.
- An EIR is also done for the entire area.
- It speed us the process, reduces the amount of time the developer has to spend in the approval process, saves the City and the developer money, and gets the job done right away.
- A second speaker was from Portland. With form-based codes, in Portland, there are no parking requirements within 500 feet of the transit point.

Senior and Affordable Housing

- One of the speakers was the Executive Vice President of Bridge House, who was the proponent for the Parkview Project here in Pleasanton. She spoke about the process and how cities can help bring a project forward, such as by donating land.

Commissioner Narum stated that she attended City Finance 101, which was an eye-opener.

- Money from the General Fund can come only from property taxes and portion of sales tax.
- An analysis of the different types of development and their impact on the General Fund was presented. Some of the economics seems to be part of planning.
- Some decisions Planning Commissions make affect the financial health of city.

Commissioner Pearce stated that she was disappointed that many of the good courses were frontloaded and that there was one afternoon when one of the only offerings was a Mobile Tour, which was interesting but basically involved redevelopment or the waterfront, neither of which is applicable to many cities.

She also attended the course on Ethics Training and Traffic Calming, which was interesting but not exactly enlightening.

Transit-Oriented Development

- cannot be effective without a school; otherwise, it becomes a Transit Adjacent Development (TAD) which creates more traffic in the long run.
- A parking structure in the Downtown contributes to Downtown vitality as people walk rather than drive through the area.

Commissioner Fox attended session on how to prevent urban sprawl. She noted that after about a ten-year process, the Home Depot in San Francisco pulled the plug due to economics. She also went on the Bus Tour to a town that was in Sacramento County that wanted to incorporate, but the County sued the town and did not allow it to incorporate and make its own city. It took a court case to form the city, and part of the settlement was that the County was allowed to keep the property taxes of the new city for a certain period of time. The city basically survives by sales tax. Some builders are enticing people to buy homes by offering hybrid cars along with the purchase of the house.

12. ADJOURNMENT

Chair Blank adjourned the Planning Commission meeting at 10:25 p.m.

Respectfully,

DONNA DECKER
Secretary