PLANNING COMMISSION MINUTES

City Council Chambers

200 Old Bernal Avenue, Pleasanton, CA 94566

APPROVED

Wednesday, February 13, 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 February 13, 2008, was called to order at 7:01 p.m. by Chair Blank.

1. ROLL CALL

Staff Members Present:	Jerry Iserson, Planning Director; Donna Decker, Principal Planner; Michael Roush, City Attorney; Wes Jost, City Engineer; George Thomas, Chief Building Official; Steve Otto, Associate Planner; Jenny Soo, Associate Planner; Natalie Amos, Assistant Planner; Leslie Mendez, Assistant Planner; and Cory Emberson, 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. January 23, 2008

Commissioner Pearce noted that in the last item under Matters Initiated by Commission Members on page 9, all reference to "Eagle Scouts" should be changed to "*Cub* Scouts."

Commissioner Narum moved to approve the minutes as amended.
Commissioner Pearce seconded the motion.

ROLL CALL VOTE:

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

The motion passed, and the minutes of January 23, 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 no speakers.

4. REVISIONS AND OMISSIONS TO THE AGENDA

Ms. Decker noted that staff would like to pull Item 5.a., PDR-645, Howard Parsell, from the Consent Calendar and move it to under Public Hearing, to be heard after Item 6.c.

Chair Blank noted that because of the heavy agenda, Item 6.d., PREV-570, Hamid Taeb/Lester Property may not be heard formally, although public testimony would be taken.

5. CONSENT CALENDAR

b. PCUP-209, AT&T Services, Inc., Pacific Bell Telephone Company
Application for a conditional use permit to allow AT&T Services to establish an operation center for AT&T Project LightSpeed on the former Pacific Bell Telephone/AT&T Services, Inc. site located at 4400 Black Avenue. zoning for the property is P (Public and Institutional) District.

Commissioner Pearce moved to make the required conditional use permit findings as listed in the staff report and to approve PCUP-209, subject to the conditions listed in Exhibit B of the staff report.
Commissioner Narum 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-2008-04, approving PCUP-209, was entered and adopted as motioned.

6. PUBLIC HEARINGS AND OTHER MATTERS

a. PUD-81-29-05M – City of Pleasanton

Application for a major modification to an existing PUD development plan to consider whether an existing six-foot-tall masonry wall along a portion of the westerly property line between Pleasanton Station and Hap's Restaurant should be retained or removed. The property is located at 30 W. Neal Street. Zoning for the property is PUD-C-O (Planned unit Development Commercial Office) District, Downtown Revitalization District, Core Area Overlay District.

Planning Director Jerry Iserson summarized the staff report, and presented the background, scope and layout of this matter.

Chair Blank disclosed that he had a brief conversation with Mr. Madden and Mr. Pereira, and had visited the property three times without the knowledge of either party. He had visited the interior of Hap's as well as the exterior of the property.

Commissioner Fox disclosed that she met with Mr. Madden and Mr. Pereira, visited the property, and discussed the matter with the Chief Building Official.

Commissioner O'Connor disclosed that he had visited the property on two occasions without either owner, had a conversation with Mr. Madden, but was unable to connect with Mr. Pereira.

Commissioner Olson disclosed that he met with Mr. Pereira at the property and spoke with Mr. Madden on two occasions regarding this matter.

Commissioner Narum disclosed that she met with Mr. Pereira at the property and had visited the property from both the Hap's side and Railroad Square side on her own three times. She also met with Mr. Madden.

Commissioner Pearce disclosed that she spoke with Mr. Madden but was unable to connect with Mr. Pereira; she also visited the property on her own.

Commissioner Fox noted that she had pulled the records from the 1967 approval and that the 1967 staff report included the recommendation that "applicants provide adequate access easement of not less than six feet from the exit of the new addition to the public right of way. This easement shall be paved to provide safe and adequate egress and shall conform to the requirements of the Building Code." She inquired whether that referred to the access to the front of the building, and if so, why it had not been paved and why the Planning Department did not follow up on that issue.

Mr. Iserson noted that it was not clear to him that it was out of the front and was worded in an unclear manner. It was difficult for him to respond to what was done or not done in 1967 or why. He noted that it may have been paved at one time and then deteriorated.

Commissioner Fox noted that there had been several situations, such as the Ponderosa project where the neighborhood wished to put ingress and egress through the Selway property and have additional access off of Martin Avenue. She did not recall previous conditions where the City has asked a private property owner to have an ingress/egress easement on another property owner and where the property owner did not agree to give the easement. She cited the Reznick issue where Mary Roberts and Ford Roberts agreed to have the emergency vehicle access (EVA) through their property. She inquired whether the City was allowed to do that for private use since the City did not have a redevelopment agency.

Mr. Iserson believed the City was able to take that action because the party that was being asked to provide the easement was the party that would benefit from the approval of the application. He noted that technically, the City had to become the applicant in this case, although the original applicant was Pleasanton Station. He noted that they were being asked, as the developer, the party that would benefit from the wall, and the party that proposed the wall, to grant the easement to the neighbor to restore a situation that was present before the wall was there. He noted that was analogous to the Reznick property in that the Reznicks, as the developer, were asked to provide the easement to the Roberts family. He added that this was analogous that the City would ask the party that benefits from the wall to grant an easement to a neighbor for access purposes. He believed the City Attorney would concur that it was legal and that it did not involve the need for condemnation or redevelopment agencies and that it was a fair and usual type of requirement that can be made of one who benefits from an application.

Commissioner Fox inquired whether it was correct that there were two existing ingress/egress points that, if they were conforming, would meet ingress/egress requirements. Mr. Iserson believed that they would comply, from a technical Code point of view. He noted that staff wished to look beyond the minimum Code requirements, which was possible with the PUD. He noted that was common with PUDs and that staff endeavored to look beyond the letter of the law in order to do what was best for the situation. In this case, the pre-existing situation was that the patrons of Hap's had an unobstructed method of exiting in case of emergency, which was no longer available to them. Staff wished to go beyond the strict limitations of the Building Code and restore the type of access that was present before the wall was built. Staff believed that if the Pleasanton Station owners would like to enjoy the benefit of the wall, they would be asked to accommodate the pre-existing situation in terms of safe emergency access.

With respect to modifications of the gate, Commissioner Pearce inquired whether staff anticipated removing the lock and the hasp or whether other modifications would be made. Mr. Iserson replied that was one modification and that there was no lock in place but that staff would like the hasp to be removed so that it could not be locked. The gate would also have to be modified because it was too big; the large size was a problem

because of the weight of the gate. The smaller gate would meet Code requirements. He noted that two doors, one that would swing out and one stationary gate, could be installed.

In response to an inquiry by Commissioner Olson regarding whether the gate would have to be large enough to fit a Dumpster through the opening, Mr. Iserson confirmed that was correct.

Commissioner Olson inquired whether it would be possible to have an opening that would be easily unlocked from the inside in the event of an emergency but remained locked from the outside so that only the Fire Department and Pleasanton Garbage would have access going into the Hap's property. Mr. Iserson noted that would be possible, but staff's concern was that in the event of an emergency, it would be unacceptable to require people to stop, look for a key, unlock the door, and exit. He noted that a crash bar on the inside of the door would enable people to exit the building quickly.

In response to an inquiry by Commissioner Olson regarding whether the "push-and-go" hardware could be installed on the inside of the door only, Mr. George Thomas, Chief Building Official, replied that there were several limitations. One limitation was the three- to four-foot maximum width of the gate opening, which was currently a single leaf of six feet; two three-foot sections could be installed in the existing opening. Push hardware on the door that swings outward was required. He noted that the door could be "exit only," with a Knox Box from the outside for the Fire Department. He noted that with that kind of configuration, anyone could reach over and deactivate it. He noted that theoretically, a push bar could be installed but that it had a mounting height requirement; it would be possible to have an exit-only configuration with no access other than through a Knox Box from the outside. He added that it would be unusual but that it could be done.

In response to an inquiry by Commissioner Olson regarding the responsible party for paying for the modifications, Mr. Iserson replied that the owners of Pleasanton Station would pay for the modifications.

With respect to the west side of the Hap's building, Commissioner Narum inquired whether there were any easements or conditions on the neighboring property for EVAs or fire safety exits. Mr. Iserson replied that was not the case and that there was a standard condition of approval on the two properties to the west that required the driveway to be a fire lane, with a width of 20 feet without obstructions, to allow a fire truck to drive through the parking lot from one street to the other, and to have access to the 400-450 Main Street site. The requirement was not written with respect to providing an emergency easement for Hap's.

In response to an inquiry by Commissioner Fox regarding whether that section was striped red, Mr. Iserson confirmed that it was striped red to indicate it was a fire lane and that there could be no parking.

In response to an inquiry by Commissioner Fox regarding whether there were 50 feet after the inward-opening gate to escape, Mr. Thomas replied that there were two ways to get people away from the building: One way was to go out to Public Way, or taking the escapees to an area of refuge 50 feet away from the building.

In response to an inquiry by Commissioner Fox regarding the required area of gathering for people leaving the building, Mr. Thomas replied that for this building, only three square feet of space per person would be required. He added that the concept was to have the area of refuge 50 feet physically away from the building, starting from the exit door for Hap's. He noted that if they also provided an access that would continue through the parking lot out to Public Way, they would not need to provide any actual space for people to stop.

In response to an inquiry by Commissioner Fox regarding whether the occupancy was rated high enough to require three emergency egress/ingress areas or whether two areas were required by Code, Mr. Thomas replied that he had not looked at the overall occupancy load but that 500 occupants were required before three exits were required. Because the occupancy load was more than 50 people, two exits were required. He noted that the arrangement of exits required one off the back; the exits could not be close enough so that one fire or other event would block both exits.

In response to an inquiry by Commissioner Fox regarding egress through the pinch point between the dumpster and the black container, Mr. Thomas replied that the gate as constructed was approximately six feet wide. He believed that Hap's had rolling dumpsters on the other side of the wall and that one may be black. He noted that the dumpsters were movable and that they may be in the exit path.

In response to an inquiry by Commissioner Fox regarding whether this property's dumpster was required to have a fire sprinkler, Mr. Thomas replied that if the building was required to be sprinklered, the accessory buildings must be sprinklered according to City ordinance. The building at 55 West Angela was not required to be sprinklered, and he did not believe the dumpster enclosure must be sprinklered in this case.

Commissioner Fox inquired whether the enclosure must be sprinklered if Hap's was required to build a structure to house its dumpster. Mr. Thomas replied that he did not know at this time whether Hap's was sprinklered, based on its age. If it were a fire-sprinklered building and the current requirements were applied, he anticipated that the owners would also want to install sprinklers in accessory buildings, including the enclosure.

Commissioner Narum noted that one of the exit routes that had been discussed was out the door, to the west, along the back side of the building that contained windows that could blow out in a fire. Mr. Thomas noted that could be an issue.

Commissioner Narum noted that the three exit routes were across the back to the west, towards Neal Street on the east side, and the exit through the gate. She inquired which of

the three exit routes would be the safest. Mr. Thomas replied that the staff report reflected the Building and Safety Division's preference that the closest, clearest, most unobstructed exit would be through the gate. The alternative exit to the west would also potentially require additional exit signs against the wall to direct the patrons towards the exit.

In response to an inquiry by Commissioner O'Connor regarding whether the easements must be granted as a condition of approval, Mr. Iserson replied that the easements would be mandatory.

In response to an inquiry by Commissioner Narum regarding the consequence if the easements were required and the 30-day window passed without the easements being done, Mr. Iserson replied that it would be a Code Enforcement issue. The City would then follow its normal enforcement procedures.

Commissioner Fox inquired whether the building owners had ever received a letter of deficiency with respect to the conditions of approval and whether they had received any letters stating they were out of compliance with drainage. Mr. Iserson replied that a specific letter had not been sent and that because this was such an old approval that went back to 1967, the City had not previously been aware of any noncompliance with respect to the normal storm runoff plan. With respect to the other complaints regarding oil and grease spills, the City's source control inspectors had visited several times and followed up on those issues. The City was currently working with the owners of the Hap's property to achieve compliance on the required issues, such as installing a covered trash enclosure. Since a complaint was filed about the drainage situation, the City has begun to work with the Hap's owners to correct that situation.

In response to an inquiry by Commissioner Fox regarding the location of the kitchen and whether it would be the most likely source of a fire, Mr. Iserson replied that he did not know the exact location of the kitchen and did not have the same statistics as the Fire Department but that fires in restaurants typically occurred in the kitchen.

In response to an inquiry by Chair Blank regarding whether there was a hole in the wall before the gate had been installed, Mr. Iserson replied that it had been solid wall and that the wall had later been built around the dumpster.

Chair Blank inquired whether he would theoretically be able to build a wall across his neighbor's driveway. Mr. Iserson replied that would be a different situation but agreed that it would not be appropriate.

Chair Blank inquired whether the fire truck would be prevented from driving through the parking lot because there were no emergency access easements. Mr. Iserson replied that the fire truck would access the building from the best, most direct, and quickest direction. He added that the easement was in place to ensure that the gate was appropriate for a safe evacuation for the people inside the building and for them to be allowed to go onto the neighboring property once they exit.

In response to an inquiry by Chair Blank regarding whether emergency access would be unobstructed, Mr. Thomas confirmed that would be the case.

Chair Blank put forth a scenario where people inside Hap's would exit through the double glass doors and inquired whether the presence of the rolling dumpster in front of the gate would be considered an obstruction. Mr. Thomas replied that the rolling dumpsters could be considered an obstruction and that it was very important for the applicants to keep the rolling trash bins in an area outside of the exit pathway.

THE PUBLIC HEARING WAS OPENED.

Mitch Pereira distributed a 2005 photo, taken before the wall was built, that depicted the reason why the wall was requested. He noted that City staff had suggested that the wall be built after he had discussed the issues that he faced. He stated that staff informed him that he did not need a permit because he had a right to fence his property. He decided to submit a plan to the Planning Department, which held onto the plan for approximately one week; the plan was signed off by Mr. Marion Pavan, and the wall was built. He believed he had to protect the integrity of his building from the wastewater and added that he must keep the area used by his tenants free and clear of contaminants. He objected to this application because he believed it was a civil matter that should not involve the City. He noted that he could not grant easements to other property owners and did not want part of his property to be taken. He stated that Hap's had other means of emergency egress and believed this egress was important because they wanted to run the parking lot, which he did not agree to. He noted that he hired Michael O'Callaghan as a paid consultant.

Eric Hoff noted that he and his wife were also partners in the project. He noted that he was the first tenant in the old train station. He described the background of this building and added that he was the managing partner of the building. He noted that the dumpsters at Hap's were pulled three times per week and that their own dumpsters were pulled once per week; he noted that the wear and tear originated on the Hap's side with respect to the garbage truck. He noted that the garbage truck was the only truck to come onto their property. With respect to the handicapped parking, there had always been a sign on the wall, but nothing had been painted on the ground as a designated handicapped area; he noted that was not an issue. He distributed pictures displaying the egress access available between the two buildings to Hap's. He added that they would be able to egress by Clyde's property, which would provide a direct exit to the fire lane if they chose to spend the money to install an exit door.

In response to an inquiry by Commissioner Fox regarding the cost of the wall, Mr. Hoff stated that the wall cost $17,500, the dumpster cost $74,850, and the gate cost $3,500.

In response to an inquiry by Commissioner Olson regarding the disposition of the wall if the application was denied, Mr. Hoff replied that they did not want to give a permanent easement to Hap's.

Michael O'Callaghan noted that he had called the Planning Department specifically to ensure that the projector would operate properly, and the fact that the projector did not work seriously impacted his ability to properly present his case. He did not believe this application should be a Planning Commission matter and did not believe this was a constructive use of the Commissioners' expertise. He did not believe a dispute over a property line should be brought before the Planning Commission. He had prepared an arduous contest to Mr. Iserson's staff report, which he believed contained misnomers, misstatements, and what he felt to be misrepresentations; he intended to address those items before the City Council and possibly before a court of law. He intended to seek a productive solution. He noted that the Pereira partnership cannot take on the liability of this emergency egress, which included the taking of a piece of property without proper compensation to include an emergency access, when there were at least two other Code-compliant emergency accesses. He noted that since Mr. Pereira was willing to grant access to the property and Haps' dumpsters to Pleasanton Garbage, that became the line in the sand from which to negotiate. He noted that there was no health and safety code that required him to do so and that the only Code issue was that no one shall obstruct the pick-up of the garbage. He noted that Hap's was able to take their garbage to Main Street through the use of garbage cans. On behalf of the applicants, he presented the following proposal:

1. The Pereira Partnership was willing to enter into a licensing agreement with Hap's to allow Pleasanton Garbage to pick up the garbage. For $50 monthly, they would clean the oil spills and other messes. Hap's will participate in the deferred maintenance in anticipation that their garbage trucks will damage the parking lot; and

2. The 12-foot-wide alleyway between Hap's and the Gale Building was part of the agreement and part of a publicly noticed hearing ordinance for the egress to Neal Street. He did not believe that either the Planning Commission or the City Manager had the legal right to change the legal emergency access as agreed. He noted that it should be maintained and enforced.

Gary Torretta noted that he was a member of the Pereira Partnership and supported his partners. He acknowledged that this had been a long-running and emotionally-charged ordeal and that no one wanted this situation to become any more unpleasant.

Mike Madden distributed the actual-size plan submitted by the Pereira Partnership for the wall, which was approximately the size of the business card. He agreed with Mr. O'Callaghan's statement that it was embarrassing to bring this issue before the Planning Commission and that he did not believe it was appropriate to build a wall based on a plan on a small strip of paper. He noted that once the wall had been built, a series of meetings commenced to craft a compromise. He had met with staff and Mr. Pereira, including a meeting with Mr. Pereira and his contractor, and another meeting with Mr. Pereira and his attorney. Mr. Pereira's in-town partner had attended a meeting, as did his out-of-town partner. He noted that he had attended many meetings and that on one occasion, he had

received a belligerent message on his cell phone which had been left at 1:30 a.m. from Mr. Pereira. At that time, he had stopped attending meetings. He believed this issue originated from a mistake, which staff acknowledged in the report. He noted that at every meeting, he had tried to craft a compromise and that staff admitted that the wall had not been approved properly. He added that staff had asked him to find a way to go forward.

Mr. Madden noted that he had met in good faith but that nothing productive had occurred as a result. He noted that he was not happy about the need to compromise but would be willing to do so in order to reach closure on this matter. He noted that the 1999 approval of Hap's conditioned his tenant to build two trash enclosures on their property, indicating cooperation between the two parties in the past. He added that the Hap's building underwent an extensive remodel in 1999 and that it was brought up to seismic standards of the day at that time. It also received many enhancements, including a full set of fire sprinklers. He expected to have his building returned to the same level of safety as it had before the wall was installed. He recalled that the Building Official had told him that in the Downtown District, current safety codes could not be unilaterally applied for financial reasons. He added that the official told him that the City tried to improve the situation as it pertained to safety. He believed this wall did not offer any safety improvements and could not accept that his building may be more dangerous than it was two years before. He would be willing to accept staff's recommendations in the staff report for closure but would like clarification on why a compromise was necessary. He noted that in Pleasanton, it was not always necessary to compromise with respect to schools, open space, or aesthetics. He believed that the wall should be taken down and added that the properties had co-existed for 40 years without a wall.

In response to an inquiry by Commissioner Olson regarding the timeline in dealing with the grease runoff problem, Mr. Madden replied that if there was a grease problem, it was due to the restaurant operations; he noted that as the landlord, he was not involved in the daily operation of the restaurant. He added that he would be happy to work to resolve the grease problem and that anyone who dumped the grease improperly was subject to prosecution. He noted that he had a good track record with his properties in town and added that he would ensure that the grease disposal was handled properly.

In response to an inquiry by Commissioner O'Connor regarding whether Mr. Madden would be willing to fix the grading if it contributed to the runoff issue, Mr. Madden replied that he would be willing to do so if done professionally. He assured the Planning Commission that he would not sheet water or grease onto their property and wanted a professional solution.

In response to an inquiry by Commissioner Fox regarding the egress to Neal Street, Mr. Madden did not believe it would be practical. He would need to see a detailed study to make any further assessment on that option.

THE PUBLIC HEARING WAS CLOSED.

Chair Blank noted that he was conflicted with respect to this application and had difficulty with the aesthetics of the wall. He was not convinced that the exit on Neal Street was practical and that his greatest concern was the emergency exit. He noted that if there were a fire in the front of Hap's and people ran to the back to escape, the gate would be difficult to open from the inside, and there would be a problem for people trying to get past the dumpster. He was also concerned that the dumpster may roll into the escape route, and he did not believe the current position of the dumpster was desirable. He suggested putting another opening in the wall for an emergency exit or at the other side of the building.

In response to an inquiry by Chair Blank regarding whether getting an easement from Pleasanton Station constituted the taking of land, Mr. Roush replied that it was the City's collective opinion that it did not constitute the taking of land and that it was a reasonable condition to impose on the development with respect to putting the wall up. He noted that putting the wall up eliminated the ability of patrons leaving Hap's restaurant to essentially go on through the property with or without an easement. With the wall in place, staff felt it was necessary to create that easement so that it was clear that the emergency access would be available in perpetuity.

In response to an inquiry by Chair Blank regarding whether there was signage or markings on the ground indicate emergency evacuation purposes, Mr. Roush confirmed that was correct and that it indicated that in the future, the property could not be developed in such a way that the access could be blocked without providing access elsewhere. It required that the gate could not be locked from the inside to allow visual and practical emergency egress.

Commissioner Olson was unsure whether this situation could be settled by the Planning Commission or the City Council. He noted that one of the owners stated that they would not grant easements and believed that having the garbage picked up is a form of easement. He noted that the emergency access problem had not been solved and suggested that the wall be torn down to allow the solution to be reached properly.

In response to an inquiry by Commissioner O'Connor regarding whether the wall would be torn down if the Planning Commission denied the application, Mr. Iserson replied that effectively denying the application would mean the wall was not approved and would need to come down.

Commissioner Fox believed that good fences made good neighbors and that property owners had the right to fence their property.

Chair Blank noted that he agreed with Commissioner Fox's statement as long as the fence did not block other people's property.

Commissioner Fox noted that the applicants had gone through City channels and supported retaining the wall. She believed the existing egress paths should be put back in

place to comply with the former sets of conditions. She did not believe the Planning Commission could force an easement on a property owner if the owner did not want it.

Chair Blank noted that this wall was not built in a collegial manner and that it went up on a Saturday; he also questioned some of the motives on both sides in this matter.

Commissioner Pearce noted that she viewed this matter as if the wall had not been built. While she saw benefits to Mr. Pereira, there were also detriments to Hap's. She believed the parties could be made whole by applying a couple of easements to the wall through the gate. She believed that Mr. Pereira and his partners will not grant an easement and noted that the City cannot compel an easement. She asked Mr. Iserson whether it was the applicant's preference that the Planning Commission deny the major modification, thereby denying the wall, or that the Planning Commission approve the major modification, knowing that Mr. Pereira would not grant the necessary easements.

Commissioner Fox suggested that the application be approved with only Conditions of Approval Nos. 1, 2, and 4.

Mr. Iserson stated that staff's recommendation was that the conditions were reasonable and enforceable. If the application were to be approved with the conditions for the easements, the City would be able to pursue enforcement to compel the granting of those easements.

Commissioner Olson inquired whether the City would have to sue the partnership in that case. Mr. Roush replied that there would be an administrative process, but if there were no compliance with the conditions, the City would have to file a lawsuit asking the court to either compel the property owner to grant the easements or to take down the wall.

Chair Blank noted that the Pereiras stated that they would rather remove the wall than have an easement. The Planning Commission could vote to deny the application or approve it with the conditions detailed in the staff report; one of the parties could appeal to City Council. He believed it was possible that the matter would end up in court. He agreed with Commissioner Pearce's assessment that if something were built without a permit, then the Commission would look at the item as if the wall did not exist and assess whether it would be approved.

Mr. Iserson noted that from staff's perspective, an approval with reasonable conditions was the preferable outcome rather than a denial that required tearing the wall down.

Commissioner O'Connor inquired whether the court could not force easements and whether the approval would still stand without Conditions Nos. 3 and 4. Mr. Roush replied that if the court decided that Conditions Nos. 3 and 4 should not be imposed, the City would request that the matter be returned to the Planning Commission to consider the application in light of those conditions being removed.

Commissioner Narum believed that of the three options, Condition No. 2 was the least desirable. She believed that the cost of Condition No. 2 should be borne by Hap's to achieve the safest exit.

In response to an inquiry by Chair Blank regarding whether the Planning Commission could require that the cost of Condition No. 2 be borne by the property owner of Hap's, Mr. Roush replied that the costs did not appear to be prohibitive. He noted that it appeared that the hasp and other locking mechanism would be required to be removed, as well as adding a modification so that the Building Code would be met. He was concerned about imposing that condition entirely upon Hap's and suggested a condition that would require the cost be split between the Hap's property owners and the Pereira partnership.

THE PUBLIC HEARING WAS RE-OPENED.

Chair Blank noted that the public hearing was re-opened to provide clarification regarding comments about the easement versus the wall.

Eric Hoff replied that they would like to have an easement for the garbage and that a better method of egress be found by Hap's. He noted that they did not want to give an ingress or egress easement to Hap's, although they would give an easement to Pleasanton Garbage Service.

In response to an inquiry by Chair Blank regarding whether the Pereira Partners would be willing to give an emergency egress easement to Hap's, Mr. Hoff replied that they would not record an emergency egress easement. He noted that they would like to retain the wall.

In response to an inquiry by Chair Blank regarding whether they would prefer to see the wall torn down rather than provide an emergency egress easement, Mr. Hoff replied that they were likely to fight it.

THE PUBLIC HEARING WAS CLOSED.

Commissioner Narum believed there should be some time limit on Condition No. 4, similar to that stated in Condition No. 3.

Commissioner Pearce did not see Hap's benefiting from the wall in any way and did not believe the Commission should require Hap's to pay for any of it if it were being built anew.

Commissioner Pearce moved to make the findings for the major modification of the approved PUD Development Plan as stated in the staff report and to recommend approval of PUD-81-28-05M to the City Council, subject to the Conditions of Approval as listed in Exhibit B of the staff report, with the modification that the garbage easement in Condition No. 4 be submitted to the City Attorney within 30 days for his review and approval.
Commissioner Narum seconded the motion.

Chair Blank noted that he could generally support the motion but was very concerned about the emergency egress. He noted that it is very difficult to egress in a panic situation during an emergency. He inquired whether the solution could be peer reviewed by the Fire Department.

Commissioner Fox agreed with Chair Blank's concerns and would like Condition No. 3 to be reworded in such a way that staff could reconsider the emergency access mechanisms and develop an emergency access plan that considered multiple alternatives. She was not confident that a full room of people could not evacuate through the back exit in an emergency.

Mr. Iserson replied that the Chief Building Official and the Fire Department had been involved in examining the access and that staff could take a more focused look at the rear exit. In terms of specific obstructions in the back, staff could re-examine the emergency egress to ensure that it is as safe and unobstructed as possible.

In response to an inquiry by Chair Blank regarding whether the Fire Department would automatically become involved following examination by the Chief Building Official, Mr. Iserson replied that the Fire Marshal and Chief Building Official worked together on this matter. Chair Blank requested that both the Fire Marshal and the Chief Building Official sign off on this solution. Mr. Iserson replied that would be possible.

Commissioner Fox expressed concern about the large number of boxes and a 12-foot-long grease spot by the dumpster, which would pose a hazard to people exiting in an emergency.

Mr. Thomas noted that he was concerned about the rear egress and that there were conditions that the Planning Commission could impose that would make the job of the Fire Marshal and Chief Building Official easier. He suggested that painted striping be included on the Hap's side that would define the area that must be kept clear; that would make enforcement easier as well.

Chair Blank suggested that the language be changed to: "submitted for the review and approval of both the Chief Building Official and the Fire Marshal." Mr. Thomas believed that would be helpful.

Chair Blank suggested the following language: "The design of the gate and the layout of the egress area shall be submitted for review and approval by the Chief Building Official and the Fire Marshal."

Commissioner O'Connor expressed concern regarding whether this language was appropriate as part of this application, which was between the City and Pleasanton Station. Mr. Roush noted that Commissioner O'Connor raised a good point and added that since it would be in the interest of Hap's to take care of that condition. It could be written in such a way that the easements would not have to be granted until Hap's made a change to its egress layout.

Chair Blank suggested that Mr. Iserson and Mr. Roush wordsmith the changes to the language during a short recess.

A recess was called at 9:00 p.m.

Chair Blank reconvened the meeting at 9:10 p.m.

Mr. Iserson advised that following a discussion with Mr. Hoff, they agreed to not contest both easements if staff would change the language on the emergency easement to be "egress-only," since that was the most important issue for staff, and to allow the gate to be locked from Pleasanton Station to Hap's but could be opened with panic hardware so that people may evacuate Hap's by pushing on a crash bar. In addition, the Pleasanton Garbage easement would be in place. They further requested that the City pay the cost of modifying the gate; the City Manager agreed to that request. Additional language would allow for the back area to be cleared out as an evacuation route. He noted that with those modifications, the agreement would be in place.

Mr. Roush read the new draft language for Condition No. 3: "The easement shall not be recorded until the property owner of Hap's: (a) has striped or otherwise marked the area to be kept clear between the Hap's exit and the gate referencing Condition No. 2, and (b) has constructed a dumpster and trash enclosure as approved by the City."

In response to an inquiry by Chair Blank regarding whether the changes were acceptable to the maker and seconder of the motion, Commissioners Pearce and Narum indicated they were.

Chair Blank requested that the representatives of each side state for the record that they were in agreement to the modifications.

In response to an inquiry by Commissioner Pearce regarding whether the Chief Building Official was comfortable with the changes in the emergency egress, Mr. Thomas confirmed that he was.

THE PUBLIC HEARING WAS RE-OPENED.

Gary Torretta, representing the Pereira Partnership, indicated the changes in the language were acceptable to them.

Mike Madden indicated that a lease represented real property and that he could not state that it would be acceptable to his tenant; he could not unilaterally make that statement without opening himself to a lawsuit.

THE PUBLIC HEARING WAS CLOSED.

ROLL CALL VOTE:

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

Resolution No. PC-2008-05, recommending approval of PUD-81-28-05M, was entered and adopted as motioned.

Chair Blank noted that because of the heavy agenda and the approaching late hour, Item 6.d. would be continued to the meeting of February 27, 2008.

5.a. PDR-645, Howard Parsell

Application for design review approval to construct four multi-tenant buildings totaling 70,575 square feet with landscaping and lot improvement at the property located at 3700 Boulder Court. Zoning for the property is I-G-40 (General Industrial) District.

Ms. Decker noted that a neighboring property owner had indicated that there were drainage issues with respect to the property to the north, and, as proposed, only a portion of the actual whole property of three parcels would be developed. The neighboring owner asked staff to consider that a drainage solution be provided to ensure that the entire property drained to the street and not onto their property as it currently did. Staff crafted an additional condition, which was agreeable to the owner and the developer, which states: "A drainage plan for the remaining portion of the site shall be submitted to the City Engineer for review and approval prior to issuance of any permit. Said drainage system shall be installed and finaled prior to occupancy of any of the buildings."

Ms. Decker noted that the parcel map that had been processed and recorded for this site had a condition of approval that stated that prior to design review application, a geotechnical investigation must be done for the purposes of conducting an Initial Study or Negative Declaration. A geotechnical report dated July 2006 was submitted in November 2007, and there were no contaminants or items of concern. Additionally, the conditions indicated that the project would be required to process an Initial

Study/Negative Declaration. Staff did not prepare an Initial Study or process a Negative Declaration due to the project's not having significant impacts and that the site conformed to the CEQA analysis as a categorically exempt item as an infill project site under Section 15332. Staff recommended that this condition be added, with each party being in agreement that no additional discussion or presentation from staff would be needed.

THE PUBLIC HEARING WAS OPENED.

There were no speakers.

THE PUBLIC HEARING WAS CLOSED.

Commissioner Pearce moved to approve PDR-645 as recommended by staff, subject to the conditions listed in Exhibit B of the staff report
Commissioner Olson 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-2008-06 approving PDR-645 was entered and adopted as motioned.

6.b. **<u>PCUP-200, John Pfund, Tri-Valley Martial Arts</u>**

Application for a conditional use permit to allow a martial arts academy which would (a) include up to 20 students ages 5 to 12 years, and an additional 10 students 16 years and older and 1 employee, Monday through Friday between the hours of 11:30 a.m. and 9:00 p.m.; and (2) provide (a) child transportation to the academy from elementary and middle schools, (b) an afternoon program for children between the hours of 11:30 a.m. and 6:15 p.m., (c) an area for homework activities, (d) after-school martial arts-related games and activities, (e) seasonal camps, and (f) care and supervision from 9:00 a.m. to 6:15 p.m. on school holidays, two weeks during the school winter break, and ten weeks during the school summer break, in an existing building located at 1262 Quarry Lane, Suite A, in the Valley Business Park. Zoning for the property is PUD-I (Planned Unit Development – Industrial) District.

Ms. Amos presented the staff report and detailed the history, layout, and scope of this application.

Ms. Decker stated that staff had received various questions regarding the project and wished to answer them for the benefit of all the Commissioners.

Ms. Decker then addressed the question of how the program interfaced with the school system and whether it was specifically endorsed by the Pleasanton Unified School District (PUSD). When staff discussed this with PUSD, the District responded that while business brochures for extra-curricular activities are made available to families, it was not specifically endorsed by the District and that businesses operated independently of the District.

Ms. Decker also addressed what school sites the applicant had been transporting children from in Pleasanton to his facility prior to the City's cease letter to the applicant that he cease operations pending a decision on the conditional use permit. The school sites were was 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 from the school to the van provided by teaching staff from PUSD. She noted that staff was questioned regarding the pickup location by the van and that if that was slightly off school property, which introduced liability issues. She noted that the District and the applicant were addressing that issue.

Ms. Decker noted that the question of how the children were being picked up had been addressed thoroughly in the staff report; the van could transport up to 14 children and an employee's sports utility vehicle was capable of transporting up to seven children and would be driven by a private party. The condition of approval stating that parents would sign the children into and out of the facility originated from the Planning Commission's specific desire to have children escorted by a supervising adult; however, it did not address transportation.

Ms. Decker noted that staff had received two letters from Barbara Bobincheck, the Licensing Program Manager from the Department of Social Services (DSS), one stating that the facility needed a child daycare license, and another, superseding the first letter, stating that they did not need a daycare license. The policy was faxed to staff, outlining how the policy can be exempted for recreational facilities for children who did not need supervision in any way, as detailed in the staff report. The letter indicated that the policies were originally crafted for boys' and girls' clubs within neighborhoods for children who are old enough to come and go freely and not for a use such as this or for tutoring facilities. Ms. Decker addressed the issue of the exemption with Ms. Bobincheck, who stated that the City was not required to acknowledge the policy, which is not State law; the policy states that children must be free to come and go at any age. Ms. Bobincheck noted that this use would be considered a daycare unless a waiver were provided, as included in the packet but clarified that the City was not obligated to agree. Ms. Decker indicated that upon further conversations she had with the Department of Social Services, the applicant-composed waiver indicates that the State requires the facility to essentially allow a five-year-old to leave the facility on his/her own as part of "come and go freely," even if that appears unreasonable and even if parents are called informing them that the child does not want to participate in the program.

Commissioner Pearce requested a walk-through of the California Department of Social Services regulations and exemptions and care and supervision. She noted that she had looked up the definition of "care and supervision" with respect to the general licensing requirements, which covered "maintenance of rules, protection of children, supervision of children's activities and schedules." Because this program stated that children could come and go as they please, the applicant indicated that they did not provide rules and supervision and, thereby, did not provide care and supervision under the definition, and, therefore, was exempt. Ms. Decker confirmed that was the premise stated by the applicant and as described by the Department of Social Services. She added that the DSS policy described children who did not need supervision. She noted the applicant's premise that the parent would sign a waiver acknowledging that the use was not a day care and that all of the applicant's activities were martial arts activities, including homework. She stated that the floor plan showed computer and resting areas and that while the applicant claimed all the activities were related to martial arts, staff did not believe that some activities, such as coloring, qualified for that status. She added that homework involving martial arts language was done, as was regular school homework; in those cases, the children were being supervised. She concluded by indicating that this is contradictory to what the applicant proposes and the policies of the Department of Social Services.

Commissioner Fox expressed confusion about the applicant-composed waiver that indicated that this was not a daycare and included language that the school is not responsible for the care and supervision of children in conjunction with the letters of parents of children in the program that used the work "care." She cited a letter from Mike Martin, which read, "My wife and I both work and find it increasingly difficult to cobble together after-school *care* for our children." A second letter from Cherie Francois read, "… they are available to *watch* my child during the hours that I need for him to be in an after-school program." The January 9 letter from Laura Tenorio-Fejeran read, "I cannot find another program with such a high level of *care*…." She noted that the parents used the word "care" in their letters, which seemed to contradict the "not-a-day-care" waiver.

Commissioner Fox inquired whether, if the facility was located in an industrial area and the children were free to come and go to the facility, the children would walk home to neighborhoods at the schools where van transportation is taking place such as the Lydiksen Elementary School, Valley View Elementary School, and Hearst Elementary School neighborhoods. She noted that the facility was near the Alisal Elementary School attendance district. With respect to the waiver, she questioned whether children who would leave the facility on their own would walk to their residential areas such as in the Lydiksen Elementary School and Hearst Elementary School locations.

Ms. Decker noted that Commissioner Fox's first statement regarding the letters from parents generally addressed "care," not "day care," although some letters specifically stated that if the after-school program were to be closed down, some parents would need to find day care. Staff noted that this application was similar to some other uses that

resembled daycare with some of the components of daycare, such as transportation, with children at the facility from 11:40 a.m. to 6:00 p.m. Staff crafted language requiring that the children be signed in and out in order to follow the City's practice. Similarly, as an example, Ms. Decker stated that the City had many applications with second residential units that looked like and had all of the facilities for second residential units; residents may state that they were not second residential units, but the City would proceed in requiring that they conform to the second residential unit ordinance. Generally, if a site resembled a particular use, the City proceeded on that basis and required the proposal to meet the ordinance.

With respect to Commissioner Fox's question regarding children in industrial areas being free to come and go, Ms. Decker replied that the issue of having use permits in industrial zones involving children has been a particularly difficult for both staff and the Planning Commission. Staff has had various internal discussions regarding the appropriateness of having these uses in industrial areas and that the Code allowed these uses with conditional use permits. Staff looked specifically at the adjacent uses and the parking impacts and what could happen in the future when the uses may change. She noted that the letter written by DSS stated that children at any age would be free to come and go as they wished. She recalled Commissioner Pearce's observation that smaller children were held back by the operator and were told that they could not leave. She noted that the issue of supervision was a fine line and that if the operator were to prevent the child from leaving the premises with anyone other than the supervising adult, the applicant would be acting in a supervisory capacity, which contradicts the DSS policy. In that case, the applicant is indeed acting as a daycare facility in a supervisory capacity.

Commissioner Fox noted that she called DSS and received examples of several martial arts studios licensed as daycare facilities by the State. One is Cerezo's Martial Arts on Florin Mall in Sacramento, which provided a webpage for an after-school program for children ages 5 to 13 years and operates from 2:30 p.m. to 6:00 p.m. Another is Manna's Martial Arts After School program, which is also a licensed daycare facility.

She noted that for the applicant's proposal to have children at the facility from 11:30 a.m. until 6:15 p.m., there was the potential for a particular child to spend 33 hours per week in the facility compared to the 17 hours that children are spending in martial arts facilities cited previously that were licensed by the State. She inquired whether exceeding 15 or 16 or 17 hours per week would require the applicant's facility to be licensed as a daycare facility and whether it was staff's opinion that the proposed application would need to be licensed by the State as a childcare facility. Ms. Decker replied that numerous martial arts studios operated in the City as martial arts studios, where children were dropped off and picked up after a 60- or 90-minute session and where no other activities were involved. Generally, the hours of operation ran after school until the early evening, but they are regular classes according to a schedule in hour or hour-and-a-half increments. She noted that the proposal before the Commission did not appear to have those same constraints in that children could potentially attend as early as 11:40 a.m. and be picked up at 6:15 p.m. Staff was concerned that this project should adhere to the same sign-

in/sign-out practices instituted within the City for conditional use permits processed for similar uses and for children's safety.

In response to an inquiry by Commissioner Olson regarding whether the State defined "school-age," Ms. Decker replied that it referred to children in the K-12 age range.

In response to an inquiry by Chair Blank regarding whether a 14-passenger van required special licensing, Ms. Amos replied that it did not.

Chair Blank and Commissioners Pearce, Olson, and Narum disclosed that they individually met with Mr. Pfund at his facility.

Commissioner Fox disclosed that she met with Mr. Pfund and his mother and that a PUSD teacher was present as well.

Commissioner O'Connor disclosed that he spoke with Mr. Pfund but did not meet him at the facility.

THE PUBLIC HEARING WAS OPENED.

John Pfund, applicant, asked a procedural question if he would be able to respond to questions that were asked after his presentation.

Chair Blank replied that after the public testimony, Mr. Pfund would have the opportunity to respond to the testimonies.

Mr. Pfund then presented a number of exhibits and stated that according to his Exhibit 1, he was exempt from child-care licensure. The document stated that if the facility did not provide care and supervision to children, it was not subject to licensure. He stated that he did not provide care and supervision to children, that he has never said to any person that his program is a daycare, or that he had represented his facility as a daycare facility.

Mr. Pfund indicated that the reason he does not provide care and supervision is because his waiver states that he is not responsible for supervision and care of children. He stated that he taught the values and physical skills of martial arts. He stated that the parents signed a waiver (Exhibit 2) which stated that he did not provide care and supervision to children and that signing the waiver was necessary in order to participate in his martial arts school. The waiver further stated that the parents acknowledged that "the Tri-Valley Martial Arts Center was not responsible for the supervision and care of my children." He presented a letter from Barbara Bobincheck, the DSS Licensing Program Manager, which stated that based on the information provided and an investigation conducted in 2003, the program did not provide care and supervision to children because the parents signed the waiver. Ms. Bobincheck further wrote that she understood the intent was to teach martial arts and that he did not need a State child-care license.

With respect to the "free to come and go" clause, Mr. Pfund described the sign-in and roll call procedures before each class and activity. He noted that after the martial arts class concluded, the students would play in the back area of the academy while waiting for their parents. He noted that he sat and monitored the front door while an employee monitored the back door. He noted that both doors had an audible alarm that sounded when the doors open and close. He has purchased and plans to install a loud screeching alarm for the back door. When the parents arrive for their children, they sign the children out for accountability (Exhibit 5); the parents then escort the children from the academy.

Mr. Pfund noted that he takes great care to know where each child was from when they are picked up from school, when on the premises, and until the parents pick them up and escort them from the facility. He noted that while he might use the word "care," and as humans, they care for children because they are our most valuable resource. However, he indicated he was in the business of educating children in integrity and success and overcoming challenges, and he was very good at that. He stressed that while the word "care" was used by the parents, the academy was not a day care.

Mr. Pfund noted that the parent's waiver sheet stated that they agree that their children were free to come and go from the facility and that if the children chose not to participate, the instructor will notify the parent immediately. He noted that was exactly what they do in that case and that he would not say that they cannot leave. Mr. Pfund indicated that for the most part, parents and children have an understanding that the children will not leave his academy until their parents pick them up because 5- and 8-year-olds do not drive. Mr. Pfund asked where the children would go. He added that the children would not just go wandering on the streets.

Mr. Pfund noted that virtually every program in Pleasanton worked in this manner, such as gymnastics academies, swim teams, martial arts schools, dance academies, and learning/tutoring centers; some of those facilities were located in the same vicinity as his business. He noted that those businesses were not in the business of care and supervision of children, either. He noted that the children were not held against their will and were free to come and go from the other facilities as well. He added that these programs have children left unattended by parents and thus should get daycare licenses as well. He noted that he had called 20 local facilities stating that he was considering enrolling his child and asked whether he was allowed to leave his son unattended at the program. Each facility replied that was allowed and further stated that if his son wanted to go home early, their policy was to call the parent to pick the child up. When he stated that he would be concerned that his son would leave the facility without him, the facility representatives each stated that would not happen. When he asked whether they provided care and supervision, the representatives stated that they were not a daycare. When he asked whether the facility had a sign-out sheet, the majority of the facilities stated that they did not.

Mr. Pfund stated that we live in a free –to-come-and-go society and that there is no commercial business catering to school-age children where children are not free to come

and go as they please. If they do, they are subject to daycare licensing because they provide care and supervision.

Mr. Pfund noted that in his research of similar businesses, he learned that the Planning Commission added a condition to these types of businesses that required them to have sign-out sheets for children under 12 and for the parents to escort them from the academy. He learned in his own research that was the norm and referred to a Kung Fu studio near the Stoneridge Drive Courthouse. He noted that his business was slightly different in that there was a condition that the parents sign them in and out and escort the them into and out of the academy. In his proposed business, the difference is that he takes the responsibility to escort the children into his academy. He noted that his hands were tied regarding whether a child can come and go, as is every other similar business; he indicated that Girl Scouts and Boy Scouts as well as swim centers and learning centers were not in the business of providing care and supervision. He emphasized that he took the greatest care for the safety of the children and noted that the parking lot was generally empty in the late afternoon/evening hours.

Mr. Pfund indicated that liability to the City is an important issue. He noted that he had taken steps to add the City of Pleasanton as an additional insured member on his $3 million liability insurance policy. He noted that he took his responsibility as a Sensei very seriously and worked to instill positive traits in his students to allow them to succeed throughout their lives. He added that the values instilled in the children during the classes and what they will learn in his program will keep the children away from drugs and gang violence. He added that the strenuous workouts kept the children on the road to physical fitness, avoiding obesity. He indicated that the same traits for the City of Pleasanton are the same character traits he passes onto the City's children and that they will become pillars of the community.

Commissioner Pearce indicated she was familiar with many of the businesses in the list of 20 businesses he had called. In response to an inquiry by Commissioner Pearce regarding whether he had asked the other facilities if the children were there more than 16 hours per week, Mr. Pfund replied that he did not ask that question. He noted that his interpretation of the items in the Health and Safety Code did not apply to him if he did not provide care and supervision to his children and that the hours and structured programs would not apply. He said he would not need a license so nothing else in the Health and Safety Code applies.

In response to an inquiry by Commissioner Fox regarding whether he ever left the children unattended because he has stated that he did not provide care and supervision, Mr. Pfund replied that he never left any child unattended and left the site. He indicated that was because he teaches martial arts and martial arts activities, but he does not provide care and supervision.

Commissioner Fox asked if Mr. Pfund always remained on-site at the facility. Mr. Pfund indicated that he did not always remain on-site but that when he left, he took all the children with him.

In response to an inquiry by Commissioner Olson regarding why he did not want to obtain a license, Mr. Pfund replied that he was in the business of teaching martial arts, and was not in the business of providing care and supervision of children. Otherwise, he would have taken child development courses and taken steps to take care of toddlers. He indicated that does not appeal to him. He noted that he had been involved in martial arts since he was 10 years old and that martial arts was what he did as a vocation. He noted he does it in a unique way. He stated that many parents were unable to bring their children to a martial arts academy because they are working and that he provided that benefit and a little perk and offered transportation from the schools to the facility.

In response to an inquiry by Commissioner Fox regarding the mention of "supervised homework time" in the applicant's narrative, Mr. Pfund stated that he never said "supervised homework time." Commissioner Fox referred to page 9 of the staff report which referred to statements regarding "supervised homework time" and that the employee would be monitoring the program in the blue book provided to the Commission.

Commissioner Pearce added that this was also on the exhibit from the applicant's website stating "supervised homework."

Commissioner Fox asked why the applicant's website refers to "supervised homework time" when the applicant says he is not providing supervision. She noted that the word used is "supervision."

Mr. Pfund replied that he would respond to the question in two ways. He indicated that staff provided the Commission that portion of the website that was up for a couple of days and then taken down, so it is outdated and was online for only a brief time. He noted that the mention of supervised homework time had never been on the website since that day. He never stated that he provided supervised homework time, meaning that he would work on academics with the children. He noted that it meant that when the children were on-site, the instructors would be on-site with the individual children.

Chair Blank noted that the applicant stated that he was always willing to work with the City and added that the staff report contained letters from the City of Dublin, addressed to John Pfund on 7223 Regional Street, reading in part: "In January 4, 2004, … at the time of inspection, numerous code violations were observed. After reviewing the City of Dublin records, it was determined that your property was in violation of Chapters 7.28, 7.32 and others … and maintaining dangerous structures or installations was prohibited." He noted that the City of Dublin cited a "suspended ceiling grid, locking hardware at the rear exit, flammable materials, overrating and overloading electrical outlets, exposed wires, nonfunctioning GFCI (ground fault circuit indicators), shower installed without proper permits, apparent unauthorized use of space, an abundance of clothing, food products, personal products, including personal hygiene products, pistols, shoes and books, a couch.…" He added that another letter was sent on January 27, 2004, following up on a letter dated February 13, 2004 and that a further letter was sent on February 25,

2004. He believed it seemed incongruous that the applicant was willing to work with the City but that it seemed his experience in Dublin was not as successful, based on the City of Dublin's perspective.

Mr. Pfund noted that the items mentioned in the letters, such as pistols, were used for martial arts. He noted that he kept personal products and clothing on hand because he spent most of the day and evening in the studio so he could change into clean clothes after the business day. He noted that the shower was installed with permits by his landlord. He noted that with respect to flammable materials and exposed wires, he had had an incident the week before the City planner came out; he had turned his furnace on, which resulted in a loud gunshot-like "pop" noise. He subsequently had the Fire Department come out to inspect it and used the paint buckets to climb into the roof area to fix the problem; the Fire Chief subsequently told him that everything was fine. Later on, the Building Inspector examined the building and found that the paint and exposed wires on the roof, which were out of his sight, needed to be fixed. He noted that he worked with the Building Inspector on that issue. With respect to the suspended ceiling and the rope, he indicated he had a rope hanging down from his ceiling. He noted that he was informed by the Code Enforcement Officer that he was not able to leave the rope in that area; he work expediently to correct that matter as well. He noted that he was issued a follow-up letter, clearing him from each of the violations. He added that his facility had been closed due to the fire hazards and that he worked with the Building Inspector to promptly resolve the issues.

Chair Blank asked if the City of Dublin closed Mr. Pfund's studio. Mr. Pfund responded that it did and that he had to work with the Building Inspector to resolve the issues to re-open it promptly.

In response to an inquiry by Commissioner Fox regarding the February 13th and February 25th follow-up City of Dublin letter and other zoning violations noted regarding hours of operations of youth programs on weekends, not in accordance with the conditions of approval, Mr. Pfund replied that he and his landlord were still working with the City of Dublin at that time to correct the wiring issues. Commissioner Fox referenced a letter sent by Dean R. Baxley, Dublin Code Enforcement Officer, regarding maintenance issues. With respect to the trash issues as well as the hours of operations and youth programs occurring on weekends, Mr. Pfund replied that while his facility was closed, the garbage accumulated. He noted that he had taken care of those issues. Mr. Pfund indicated that with respect to the youth programs on the weekends, that did not apply to him but to his co-tenant. He noted that while the Fire Chief was working with him, he did not make any mention of the items later cited by the Building Inspector. He emphasized that he worked with the Building Inspector to correct the conditions as quickly as he could. With respect to the conditional use permit, the City of Dublin had lost his conditional use permit paperwork; he was required to reapply after being open for five years for a new conditional use permit, which he was granted.

Commissioner Fox noted that according to her conversations with the City of Dublin, they indicate that the business had moved physical locations. They indicated that starting

in November 2002, they became aware the business had moved previously and around that time and in April 2003, they attempted to work to get an application for a conditional use permit in the new location.

In response to an inquiry by Commissioner Fox regarding whether he had changed physical locations in Dublin, Mr. Pfund replied that he had moved across the street from his original location. He noted that he had a conditional use permit for each location. He noted that the City of Dublin lost that paperwork.

Commissioner Pearce requested that the applicant clarify the licensing requirements, a description of the program, the conditions that would exempt him from providing care and supervision. She understood that in order for his business to be exempt from licensing, it must be a drop-in program without supervision, without specific activities, without a structured program, and inquired how that would apply to a martial arts program, which seemed to provide each of those items, including structure, supervision, and for children to sign up in advance. Mr. Pfund replied that he was exempt because he had a waiver and required the parents to acknowledge that their children were free to come and go in his facility. Mr. Pfund stated that he is not required to have a license or to follow the rest of the Health and Safety Code because it does not apply to him as he believes he does not need a license.

In response to an inquiry by Commissioner Fox regarding whether the City Attorney agreed with Mr. Pfund's statement, Mr. Roush replied that he did not agree with that statement. He advised that just because a waiver stated that a business was not a certain type of business, it did not follow that the business was not that type of business. He indicated that to determine the use, it must be based upon what the applicant is actually proposing.

In response to an inquiry by Commissioner Fox regarding the City Attorney's opinion of the nature of the applicant's use, Mr. Roush believed it fell under the definition of a child-care facility under the State regulations. He believed that it provided care and supervision and met the other definitions.

Tim Nibert spoke in support of this project. He noted that he was a black belt in the Tri-Valley Martial Arts academy and added that he instructed the children's program. He discussed the positive effects on the children and the community. He noted that he was currently 17 years old and started taking the program when he was eight years old. He added that his younger sister had just started the program. He noted that ju jitsu had been a very positive influence in his life and added that the studio instilled many positive values in the children. He disagreed with the assessment that the studio provided care for the children and added that the parents saw the academy as an activity for the children that would prevent some of the negative aspects of day care. He noted that they brought the children from school as a convenience for the parents and taught the children martial arts until the parents picked them up. He noted that the games were martial arts-related games.

Jeff Nibert spoke in support of this project. He noted that his son and daughter were involved in the Tri-Valley Martial Arts program and noted that Mr. Pfund was a very positive influence in his children's lives. He noted that his son's 9½-year involvement with martial arts was the longest he had remained involved with any one activity, and he considered it to be a considerable accomplishment. He noted that the benefits of the program included it being a wholesome and fun activity, later instilling self-confidence. He noted that it was also a self-esteem- and character-building activity. With respect to the findings required to approve the conditional use permit, he noted that the staff report stated that none of the items had been found to be true. He noted that the staff report stated that the parking issue could be resolved if the academy reduced the maximum number of adult students to six. He noted that the adult programs were held two evenings per week, from 7:00 p.m. to 9:00 p.m. and that five parking spaces were allocated. The staff report stated that six spaces must be allocated if there were 10 students. He noted that there was plentiful street parking at that time and that he had never had any problems parking on-site during the evening. He disagreed with the notion of not making a finding for lack of one parking space. He noted that he did not tell his children that they were free to come and go; he instructed them not to go anywhere until he picked them up. He noted that he had never had any problems with his children leaving the applicant's facility or any other facility; he believed that was common sense.

Mr. Nibert noted that Section 2 stated that "the Tri-Valley Martial Arts was located in the middle of an industrial park and not a residential area and that motorists within the business park would not expect to encounter young people, which could lead to an injury. He noted that Quarry Lane School was located across the street and that a music academy was located in the same building; another athletic academy was located down the street. He noted that he expected to see young people in that area. He believed the statement in the first finding contradicted the statement in the second finding, which read, "The proposed martial arts school would provide instruction lessons to local children and adults, along with providing other child-related martial arts services." He noted that the City has allowed similar uses to be located in similar industrial and office areas.

Mr. Nibert noted that Finding 3 stated that given the degree of inconsistency between what was originally submitted and the current plan, staff found that the "proposed use was detrimental to public heath, safety, or welfare, or materially injurious to properties or improvements in the vicinity." He believed that Mr. Pfund had demonstrated a commitment to adhere to the current plan and scope of operations, but because the new scope differed from the old scope, staff seemed to consider that a danger to public health, safety, and welfare. He found that a difficult statement to believe.

Darrell Darling spoke in support of this project. He noted that he had been active in the sport of judo for over 50 years and had known Mr. Pfund since the early 1980s. He believed that Mr. Pfund was a competent business owner, displayed expertise and dedication to his art, and displayed great enthusiasm in passing his knowledge on to his students. With respect to the adequacy of parking at the Quarry Lane School, he had never experienced a problem with parking during the class times since the other businesses were closed. He did not believe that parking would become a problem, even

if he expanded his business. He believed the use at this location would be a positive asset to the community. He noted that the academy taught self-defense, discipline, respect, and better citizenship for mutual benefit and welfare of all. He urged the Planning Commission to approve this application so the applicant may resume operation of his business.

Shaibal Dutta spoke in support of this project and noted that his five-year-old son attended the Academy, which had been a very positive experience for him and his family. He indicated his family moved to Pleasanton in August 2007, that his son attended Lydiksen Elementary School, and that they were looking for after-school childcare. He found out about the A+ Academy program. He complimented the applicant on his approach to teaching and in instilling values such as discipline and physical strength in the students. Instead of sending his son to a traditional daycare program after school, he decided to select this program instead. He also indicated that the applicant built activities around themes such as confidence, honesty, and focus in the children through teaching martial arts. He also paired the older students with the younger students to allow the older students to act as responsible mentors and so the younger children could relate to mentors closer to their age. He added that Mr. Pfund had a very good relationship and communication with the parents. He had noticed an increased level of confidence in his own son and that as a result of the program at the Academy, his son raises his hand in school. He noted that he would never send his son to any facility where he had any concern for his safety and added that he was confident in Mr. Pfund's ability to ensure the children's safety.

Jane Carr spoke in support of this project and added that she had known Mr. Pfund for approximately 30 years and has been his personal instructor for 15 years. She attested to his abilities to safely teach children. She added that he was able to teach the children self-defense as well as the three C's, the three H's, three R's, and four S's: the qualities of courtesy, confidence, and consideration; honesty, humbleness and honor; readiness, respect, and responsibility; safety, service, science, and sportsmanship. She noted that they used the tools of martial arts to achieve those particular characteristics and that they wanted the children to become good citizens and leaders in the community. She noted that she had 48 years of martial arts experience and believed that Mr. Pfund was a credit to any youngster who would take lessons in his academy. She noted that Mr. Pfund would teach the children using the sciences of the physical part that go along with the mental and the spiritual. She was confident that he was an asset to the community.

Dan Monaghan spoke in support of this project and noted that his child was enrolled in the applicant's program. He noted that parking was not an issue and that there was sufficient parking space on the street. He indicated that he has two older children who attend Foothill High School who have previously taken martial arts at a regular martial arts studio for two to three hours a week, but that it had marginal benefit at best. He indicated that the challenge is that it was not for an extended time, being only two to three hours a week, and traditional with parent drop-off and pick-up. He noted that he felt that long, extended times per week of martial arts could possibly be more beneficial and have an effect. He noted that his ten-year-old child had already tried daycare, had

been in two daycares already, which was not a successful experience and did not work for him. He stated that the word "daycare" not being part of the business title piqued their interest, and the fact that the Tri-Valley Martial Arts academy stated it was not a daycare was a positive aspect for their family. He noted that the instruction techniques used by the applicant blended traditional martial arts instruction as well as other activities such as with balls, climbing walls, and ropes that helped maintain the focus for younger children from six to twelve and thirteen years. He noted that his son's grades had skyrocketed since attending this program. He observed that the applicant displayed a great deal of integrity and that he trusted and respected him. He noted that although he did sign the waiver saying that children could come and go as they please, he indicated that he knew in reality that was not the case.

Amy Fluker spoke in support of this project. She believed that Mr. Pfund ran an excellent program and added that her young five-year-old Kindergartner daughter was a student at the academy. She noted that her daughter had gained confidence, focus, and integrity and was much less shy than when she began the program. She noted that her son was in a daycare, and she did not consider this program to be a daycare. She noted that the parking situation at Quarry Lane School was very congested and that he never had a problem finding parking at the applicant's site.

Nancy Pfund spoke in support of this project and noted that she was the applicant's mother. She noted that she was a retired elementary and middle school teacher from the Livermore Unified School District and that her son made it a practice to do the right thing. She said her son has made up many new narratives over and over and has been up till the middle of the night creating narratives. She expressed pride in her son's endeavor to follow his dream and make a positive impact on the community; she added that he had a strong spirit and urged the Commission to approve this application.

Jack Balch noted that he represented the building owner, Big Valley LP, and believed this use was a good fit for the building. He realized that the City must consider the parking only on the parcel rather than the street parking or adjacent parcels. He noted that the applicant was a tenant in good standing and had always paid his rent on time. He added that he had addressed all of his concerns and he was comfortable with the use. He did not believe there was a parking issue and noted that the applicant would be able to park in the spaces belonging to the other parcels which he also owned. He noted that the hours of operation for pickup occurred during low parking usage times for the other businesses. He noted that he always drove carefully in the area because of the children across the street at the school. He stated that the applicant did not have any outstanding Building Code issues to his knowledge and that the building was up to Code. He believed the applicant was trying to do the right thing as he understood the rules and that he personally found it difficult to make sense of all the City codes and regulations. He understood the City's concerns because of all of the numerous narratives, but believed Mr. Pfund had tried to work with staff as best he could and that staff had brought forward some excellent points. He indicated that he was not an attorney and that the Codes are difficult to understand; that is why there are three or four versions of Mr. Pfund's plan. He encouraged the Commission to approve this application.

Mark Preisendorf spoke in support of this project and noted that he worked several units down from the subject site. He noted that by the time he left at five, he was the last car out; that was normally before Mr. Pfund arrived. He noted that the entire parking lot was open and that he was welcome to use their parking spaces. He did not know Mr. Pfund personally but believed that he was a good neighbor.

Gerald E. Hodnefield noted that he owned the building next door to the subject site. He did not have any particular problems with the applicant or the use. He expressed concern about the overall parking situation at the site but noted that if most of the students came after hours, he did not anticipate a major problem except that some tenants work until 6:00 p.m. He said that martial arts, gymnastics, and dance studios cause parking problems and that there is already a parking problem next door. He indicated that these business plans change and these businesses have recitals during business hours which cause significant parking problems. He expressed concern about potential events held during normal business hours and inquired how he should address any parking problems on his site.

Cherie Francois spoke in support of this project and noted that her five-year-old son attended the martial arts classes. She recalled that at the beginning of his enrollment, Mr. Pfund made it clear that the academy was a martial arts program and not a daycare. She and her husband investigated the site and the academy very carefully and were satisfied that it would be a good place for their son. Regarding children leaving the facility, she noted that her son had participated in other programs such as camps ad gymnastics where he had to be signed out and that he was familiar and compliant with the routine of waiting to be picked up. She noted that her son became more self-confident, respectful, and physically stronger as a result of the program and that it was a very positive environment for him. She noted that there was no parking problem at the site and no traffic on the streets.

Scott Handelman noted that he was an attorney and has represented Mr. Pfund before. He realized that the issue of daycare and children and State licensing had become a significant one for the Planning Commission and that it was largely a matter of semantics. He indicated it was an issue of choice. He realized that the Planning Commission retained the authority to grant or deny the use permit and noted that it was really the parents' choice to make this decision to bring their children to this academy. He had been impressed by the testimony in favor of the applicant and believed the real issue was whether the parents could make this choice for their own children, like a lot of things in our country which are based on individual choice. He indicated that Mr. Pfund's program is outside what we are used to because we need an appellation of a daycare and it should be a daycare; however, that is not the real issue, which is whether the parents can make this choice for their children. He believed the parents had demonstrated that they had already made the choice to bring their children to the facility and believed it was a disservice to the community to disallow that choice. He noted that the zoning permit had been originally granted to the applicant, which he relied upon to his detriment. Mr. Pfund had entered into a three-year lease at a very significant rental

cost, and if the permit were to be denied, he may be left with a possible lawsuit for the remainder of the lease term. He understood that the legal ramifications was not part of the Planning Commission's decision and emphasized that the parents should be able to make the decision.

Mike Martin spoke in support of this project and noted that he had two children ages six and nine years old enrolled in the Tri-Valley Martial Arts program. He noted that he and his wife had checked the program out thoroughly and decided that was the right activity for their children. He did not appreciate being told what the best choice for his children was and believed he and his wife had made the best choice for their children. He indicated he did not know the legalese behind this. He noted that his son had looked forward to attending the academy, and while he had not attended since it closed over Christmas break, he still wished to attend it.

John Pfund noted that there were two issues. He said that he could not be considered a daycare according to the Health and Safety Code because he did not provide care and supervision for the children, that he is not a daycare, and that the parents signed a waiver stating he was not a daycare. He noted that the Planning Commissioners or staff had not seen his program with the children and added that seven parents out of the ten families had spoken before the Commission. He emphasized that none of the parents had described any activities that would occur in a normal daycare facility, such as the children have been sitting around coloring or playing with toys. He indicated that what the Commission had heard from parents is that he has been teaching real values and noted that he taught the same values to his students that he was taught by his own martial arts professors. He recalled that the parents stated that their children had learned confidence, self-respect, discipline, and integrity, and have come out of their shells, had become more interactive with other children, and achieved better grades. He noted that those attributes are not gained in a daycare program.

Mr. Pfund indicated that he cannot be teaching a daycare program when he is not, and the parents say it is not a daycare program. He requested that an additional ten children be allowed to enter into the program and learn martial arts. He indicated that this is America, and a lot of people in America have dreams, but most do not follow them and go into a run-of-the-mill like. But he follows his dreams and has wanted to do this since he was ten years old. He noted that he had studied martial arts for over 30 years, and that he would continue to do so for the rest of his life. He would like to continue his instruction activities in his current location. He noted that he did not provide care and supervision to the children; nor did the swim centers, gymnastics centers, or dance studios. He believed the City policy was to create a waiver, which he already had. He would be happy to sign a condition stating that he would retain the waiver and would have the parents escort their children out of the facility. He noted that it had nothing to do with care and supervision. He noted that he would be happy to work with the City in order to make the business work.

THE PUBLIC HEARING WAS CLOSED.

Commissioner Fox indicated that she had a question for the City Attorney and noted that with respect to the exemption from licensure within the Evaluator Manual, the manual read, "Once at the facility, children are not assigned specific activities or placed in a structured program" and "Children participating in the drop-in recreational program are not there to receive structured care and supervision." She added that it further said "children may arrive or depart from the facility on their own." She noted that the staff report discussed the schedule and that after the children's arrival, there was 30 minutes for lunch, martial arts from 1:00 p.m. to 2:00 p.m., followed by a half-hour break. Following the break, there was leadership, agility, and balance training from 2:30 p.m. to 3:30 p.m., then martial arts games and activities from 5:00 p.m. to 5:30 p.m.; and quiet activities from 5:30 p.m. to 6:15 p.m. until pickup. She noted that the applicant's website talked about "structured games and activities." Based upon the Licensing Manual and the applicant's description of his business, Commissioner Fox inquired whether or not the children were in a structured program. Mr. Roush replied that as indicated in the staff report, staff had not agreed with the State's determination that the Academy would fall within the exemption. Staff indicated the rules for the protection of children as well as the schedule and activities set forth for the children would remove the use from the exemption.

Commissioner Fox noted that the testimony indicated that the waiver allowed children to come and go as they pleased, although it was not the parents' or applicant's experience that in reality, it would happen. She inquired whether that would invalidate the waiver. Mr. Roush did not know whether it would invalidate the waiver *per se*, but staff believed that the waiver notwithstanding, the children were not really free to come and go and that they were kept there until the parents arrived. It was staff's opinion that it is not, that the waiver is invalid, and that it did not reflect reality.

Commissioner Fox noted that there is a 14-passenger van and a seven-passenger van. In response to an inquiry by Commissioner Fox regarding whether there would be potentially 21 cars at the facility in the morning during the summer months, Ms. Amos replied that in that case, the same parking requirements would apply as for the adult classes, which was one space for every two students in attendance. The applicant stated that the parents generally staggered their arrivals.

Commissioner Pearce noted that the applicant had called similar facilities such as dance and gymnastic facilities for special activities to inquire about their care and supervision policies and inquired whether the number of hours per week the children attended the facility had been determined. She wished to understand the difference in hours and the restrictions between a gymnastic studio when a student is dropped off for an hour and this use, when an exemption for care and supervision would be required, and when it would not be required.

Ms. Decker replied that one of the distinctions was the length of time per activity and for many of these types of facilities, the children attend for an hour or an hour-and-a-half. In past projects, it is a bona fide daycare if children are present for over 1½ hours per day or over 16 hours per week. Staff had taken great care to make that distinction and required

sign-in/sign-out sheets. Staff believed that the children would be at this particular facility longer than those hours and would not meet the exemption. In other use permits, if it is over those hours, staff requires that these uses meet the State requirements to obtain a daycare license.

Chair Blank noted that there had been considerable discussion about daycare and its licensing and inquired about the cost and other burdens required to acquire a daycare license. Ms. Amos replied that staff typically did not ask those types of questions since the fiscal impacts were not considered in these matters. She noted that the PUD required a conditional use permit for recreational facilities and daycare facilities.

Commissioner Fox asked, since staff believes that the use requires a childcare license, whether the facility would be required to conform to the Municipal Code requirements and zoning requirements for a childcare center. Ms. Amos noted that he PUD required a conditional use permit for recreational facilities and daycare facilities.

Chair Blank asked if the rest of the Commission had other questions. Commissioner O'Connor indicated the questions he was going to ask have already been addresses.

Commissioner Fox agreed with Mr. Roush that this use did not follow the exemption criteria as a drop-in facility because of the issue with the waiver. She believed that in order for the use to qualify for the exemption, it must truly reflect reality that the drop-in requirements meant that the children may be free to come and go as they please. She believed this use required licensing in accordance with Health and Safety Code 1596.792 and 1596.793.

Commissioner Fox moved to deny PCUP-200, based on the inability to make any of the conditional use permit findings.
Commissioner Pearce seconded the motion.

Commissioner Pearce noted that she had no doubt that Mr. Pfund was a good teacher and that the program taught positive skills. She could not make Finding No. 2 with respect to the current business plan and could not find that it was not detrimental to the public health, safety, and welfare because having the children free to come and go as they please was incompatible with the City's sign-in/sign-out policy. She noted that the applicant could continue to state that he did not provide care and supervision, but under the reading of the licensing requirements, since he provided structured activities, rules, instruction, he provides care and supervision, and a waiver did not repudiate that. She stated that she would like to see this business succeed and hoped that modifications could be made to the business plan. She noted that she could not support it with the way it was currently structured.

Commissioner Olson noted that he had no doubt that this was a great program but had problems reconciling the statement that there was no care and supervision and the fact that the applicant picks the children up at school. He believed that at the kindergarten level, there should be supervision and care while they are in the applicant's presence.

Commissioner Olson referred to his previous question regarding the definition of "school age" and although Grades K through 12 at the upper ages may not require care and supervision, Grades K through something does. He suggested that the way to solve the problem would be to get a license. Commissioner Olson indicated he would support the motion.

Commissioner Narum noted that she could not make Finding No. 2 and could make Finding No. 1 with respect to the parking. She was uncomfortable with the motion on the floor and understood that the denial was based on the inability to make any of the findings.

Commissioner Fox noted that she supported the motion with respect to parking because of the classification of the facility in Dublin according to the materials in the staff report. She noted that it had been classified as a community facility use in Dublin as well as an indoor recreational facility use. She noted that as an indoor recreational center, the parking ordinance states that one parking space would be required for every 50 square feet inside the building, which would require 67 parking spaces; that was further reduced to 45 parking spaces. She would prefer to support staff's findings and then discover the true classification. She noted that it may be classified as a child-care center during the day and an recreational facility at night and during the summer or some combination.

Chair Blank noted that he was very familiar with the neighborhood because his son attended Quarry Lane School. He did not believe there was a parking issue at all. He believed that with respect to the "free to come and go" issue, the children could not be physically restrained. As a parent, he typically felt comfortable leaving his child at an instructional facility once he had checked the site. He believed that too much had been made of that issue and noted that even on closed-campus high schools, the students were free to come and go, regardless of consequences. He believed the Planning Commission could vote to deny or could vote to approve with conditions that would make the conditional use permit satisfactory to the Commission, such as licensing or other procedures. He noted that the Commission had heard a considerable amount of compassionate and heartfelt testimony and had no doubt that Mr. Pfund ran an excellent program. He indicated he agreed with Commissioner Olson regarding requiring licensing. He suggested that whether the applicant believed his facility was a daycare or not, it may be best to obtain a daycare license or to comply with the requirements of a daycare facility. He believed that would remove any question with respect to staff's expectations. He noted that if the Commission denied this application, the applicant would have to start at square one.

Mr. Roush noted that may be construed as imposing a business plan on the applicant that he may not want to pursue.

Chair Blank understood the concern and added that it would be the applicant's choice whether or not to comply with the conditions to obtain the conditional use permit.

Mr. Roush suggested that the Planning Commission may wish to deny the application without prejudice and that a different application or business plan by the applicant may be considered to be different enough so that we would not have to wait for one year before resubmitting the application.

Chair Blank liked the concept of denying the application without prejudice.

Commissioner Fox inquired whether she could restate her motion with an amendment.

Commissioner Olson did not believe that parking was an issue.

Commissioner Fox asked for guidance regarding amending the motion.

Commissioner Pearce asked for clarification from Mr. Roush regarding whether this would preclude the applicant from appealing the decision to the City Council.

Commissioner Fox moved to deny PCUP -200 without prejudice, based on the inability to make conditional use permit Findings No. 2 and 3.
Commissioner Pearce seconded the motion.

In response to an inquiry by Commissioner Narum regarding Commission Fox's basis for denial based on Finding No. 3, Commissioner Fox replied that the staff report discussed the issue of the applicant not ceasing operations as directed by staff within the prescribed timeframe. She noted that the letters referred to by Chair Blank regarding the tenant space in Dublin declared unsafe and occupancy revoked in the January 27th letter also entered into her assessment. She also understood that in the 2000-2003 timeframe, when the applicant moved to the new location, the City of Dublin requested the submittal of the application over the course of several months with three letters. She believed there were inconsistencies between the three business plans and added that the website that was submitted as an exhibit discussed supervision and care as well as supervised homework and disagrees with the waiver.

Chair Blank noted that the City's letter to cease operations was received December 31, 2007 which was New Year's Eve, stating that he must cease operations by January 4, 2008.

Commissioner Fox noted that the applicant also did not comply with the conditions set forth in the February 13 letter from the City of Dublin.

Chair Blank agreed with the first part of Finding No. 3 with respect to the inconsistency. He noted that the City of Pleasanton sent a letter to Mr. Pfund on August 17, 2007 requiring a second notice on September 25, 2007. He could feel comfortable with the inconsistency and multiple revisions during that time but did not feel comfortable criticizing the applicant because he was noticed on December 31, 2007 to cease operations by January 4, 2008.

Commissioner Fox suggested striking that sentence and requested that staff substitute language regarding the violations in Dublin that had not been immediately corrected. She also requested that the City of Pleasanton letters be included as well. Mr. Roush noted that could be done, including referencing Code violations in Dublin that were not immediately corrected.

Commissioner Narum stated that if the application was being denied without prejudice so that the applicant may have the opportunity to get a daycare license, she wanted to know what the remedy would be to cure the third finding. She noted that if the occurrences went back five years, the applicant did not have a remedy to fix those issues.

Chair Blank noted that the applicant may return with the current issues having been remedied.

Commissioner Narum inquired what would have changed regarding the applicant's prior history with the City of Dublin.

Commissioner Fox suggested that the City of Dublin may be able to produce a letter stating that they lost Mr. Pfund's application, confirming Mr. Pfund's explanations..

Commissioner Narum expressed concern about this line of reasoning if the Commission would allow the applicant to return with the daycare license and did not see how Finding No. 3 could be made based on past history.

Commissioner O'Connor believed that the applicant was also being asked to return with a new narrative, which would be another change.

Mr. Roush acknowledged the dilemma experienced by Commissioner Narum and did not know whether it could be resolved other than to make a substitute motion to deny the application based on Finding No. 2. He advised that the Commission could vote on the motion on the table or that a substitute motion may be made.

ROLL CALL VOTE:

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

The motion failed.

Commissioner Fox moved to deny PCUP-200 without prejudice based on the inability to make Finding No. 2.
Commissioner Narum 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-2008-07 denying PCUP-200 without prejudice was entered and adopted as motioned.

Commissioner Fox left the meeting and was replaced on the dais by Commissioner O'Connor.

c. PAP-114/PDR-684, Gerald Hodnefield

Appeal of the Zoning Administrator's denial of an application for design review approval to construct a four-car carport for the office building located at 1020 Serpentine Lane. Zoning for the property is PUD-I (Planned Unit Development – Industrial) District.

Ms. Mendez summarized the staff report, and detailed the background, scope, and layout of this application.

Commissioner O'Connor inquired whether this was an attempt to reserve parking without so marking it because they had problems with available parking, and what other remedy there might be to use four spaces for the applicant's use. Ms. Mendez replied that staff noted that this business park was developed as a whole, and it was not known at the outset how many tenants would go into the building.

Commissioner Narum noted she had driven through the area earlier in the day and noticed that the parking lot on the south side, near the carport, at 1024 Serpentine Lane was fairly empty. She noticed that nearly every space had been reserved with a sign painted on the ground for several of the tenants. She supposed that was the reason 1020 Serpentine Lane was having parking problems.

Chair Blank noted that it was 11:30 p.m. and requested a vote from the Commissioners on whether they intended to complete the item.

Commissioner Pearce moved to complete the current item.
Commissioner Olson seconded the motion.

ROLL CALL VOTE:

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

The motion passed.

THE PUBLIC HEARING WAS OPENED.

Gerald Hodnefield, appellant, presented photos of the parking lot immediately adjacent to his building and added that it was built by the same contractor at the same time. He submitted several letters written by his tenants. He noted that the Code appeared to indicate that the building had common owners when in fact he was the only owner. In addition, they did not share parking with the adjacent landowner. He noted that he also owned four other buildings in the same business park and that he was one of the five founders of Devcon Construction Company, which was started approximately 35 years ago. He noted that since that time, he has developed, owned, and managed over 15 million square feet of office and commercial space in the greater Bay Area. He noted that he had grappled with a wide variety of real estate management issues and added that parking issues were common. He noted that there was some confusion with respect to the application put in by Peter Shutts because he did not realize that there was a parking allocation problem. When he applied for a parking shelter, he had intended to shelter his car from the summer heat and to ensure he had a parking space to return to when he left the lot to visit a tenant. He noted that he had always intended to allocate reserved parking for his own use and would not have spent $40,000 for a parking shelter that he would not be able to use.

Mr. Hodnefield noted that nearly all the buildings in the Valley Business Park were designed for small tenants, including mini-contractors, suppliers, and subcontractors. Over the years, many of the buildings that did have adequate parking for those uses had also used the parking spaces for fenced construction yards, parking of large storage containers, recreational vehicles, trailers, inoperative motor vehicles, and construction equipment. He noted that those uses had taken up much of the existing parking. Most of the buildings had parking ratios of two to three cars per 1,000 square feet of building area, which was fairly common for buildings used by contractors and for storage. However, that parking ratio was not adequate for office uses. He noted that some of the uses had metamorphosed into schools, service organizations, and businesses with more employees. He noted that his building had a four-car-per-1,000-square-foot-building ratio, which was generally adequate except for one tenant who used more than his share of parking; he planned to discuss that situation with him and added that the rest of the tenants adhered to their parking quota. He noted that one tenant, who owned a tutoring service, only used her spaces after hours. He noted that it was very frustrating to pay more rent for an office, only to find out that there still was no place to park.

Mr. Hodnefield noted that he and his staff took frequent car trips during the day and were frequently left with no place to park. He did not believe it was equitable or convenient that they would have to park on the street when parking should be available in their lot. He did not believe those who abused the parking spaces should be able to use his spaces at no cost because of City policy. He noted that they had a parking problem because they were prevented from managing their parking area. He added that tenants parked wherever they pleased, whether or not it imposed on other neighbors. He added that tenants and employees from other buildings that had insufficient parking also parked in his lot and then walked to another property a situation over which he had no control. He noted that he was prevented from allocating the parking in an equitable fashion for his tenants. He believed the City's parking policy was well intentioned though flawed and that it needed more consideration. He expressed concern that this policy had the effect of penalizing those who followed the rules and rewarding those who did not.

Mr. Hodnefield noted that the people who did not abuse the parking did not object to allocation of the parking that they have paid for. He had observed that the people who abused the parking objected to the allocation because they would have to find other parking spaces. He respectfully asked that the City take a serious look at the policy, what it did, and what it did not do. He believed the policy was flawed and unnecessary and that it created a management headache for him. He believed that the policy only benefited those who did not respect the rights of the tenants who paid for parking through their monthly rent. He requested that an exception be made for his building. He believed the enforcement of this policy was arbitrary and was enforced on a limited basis. He did not believe it was right for a tenant to paint their name on a parking space without consequence. He noted that the parking shelter was a side issue and that if it was not approved, he could live with that. He believed the real issue was the genesis of this policy, what it was intended to do, and what it accomplished. He believed that as a property owner and manager, he needed the right to administer and manage his parking so that his tenants had sufficient parking. He noted that if his neighbors abused the parking availability, he needed some way to resolve that issue. He noted that his tenants were paying for parking that they could not use.

Commissioner O'Connor inquired whether Mr. Hodnefield could post his property, and whether he could have an improperly parked car towed if there was no reciprocal parking agreement. Mr. Roush replied that under the Vehicle Code, he could not post the parking.

Ms. Mendez noted that staff would work with the appellant as well as with the legal staff. She noted that the Code did not allow for reserving certain spaces for certain tenants in a multi-tenant situation, regardless of the number of buildings.

Commissioner O'Connor inquired whether the appellant was able to resolve this issue through a different mechanism.

Mr. Hodnefield noted that he needed the ability to manage his own parking lot and to adequately and appropriately give parking to people who have paid for it.

Commissioner Olson believed that approach made sense.

Jack Balch noted that his company owned the buildings directly adjacent to the appellant's building and added that he did not have the same parking issues with his tenants. He noted that he did not mark their parking spots, although he had considered it and was looking into posting signs for parking spots. He was concerned that the amended trellis as proposed by staff would provide a security breach to the roof of his building. He inquired as to the setback of that trellis and was concerned about the current thefts of copper and other items from rooftops.

THE PUBLIC HEARING WAS CLOSED.

Chair Blank believed the issue went further than people taking the appellants' tenants' parking spots and understood the desire to have a covered parking spot out of the heat of the sun. He suggested modifying the conditions so that the security for the adjacent roof would be assured. He did not have any problems with the appellant's proposal since he owned the building, including marking parking spaces.

Commissioner Narum agreed with Chair Blank's comments, particularly since the appellant owned the building. She agreed that there should be a setback from the trellis as it related to the adjacent building.

Ms. Decker noted that any arrangement should involve the Planning Director or his designees to ensure that the design and setbacks were appropriate.

Chair Blank suggested that the appellant be directed to work with the Planning Director to come up with a mutually acceptable design.

Ms. Decker noted that staff would ensure that the setback between the buildings are appropriate.

Commissioner Pearce moved to uphold the appeal PAP-114, subject to the conditions of approval in Exhibit B as modified by staff, with the deletion of Condition No. 9 prohibiting the applicant from reserving the parking spaces for specific tenants and the addition of a condition that the appellant work with staff to ensure that the construction of the carport does not affect the security of the neighboring property.
Commissioner Olson seconded the motion.

ROLL CALL VOTE:

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

Resolution No. PC-2008-08 upholding PAP-114 and approving PDR-684 was entered and adopted as motioned.

d. PREV-570, Hamid Taeb/Lester Property

Work session to review and receive comments on a preliminary application for a 42-unit single-family residential development on the approximately 116-acre Lester property located at 11021 and 11033 Dublin Canyon Road in Unincorporated Alameda County.

This item was continued to February 27, 2008.

7. MATTERS INITIATED BY COMMISSION MEMBERS

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

No discussion was held or action taken.

Music Academy

Commissioner Narum requested that staff look into the music academy with respect to the use permit that was just approved. She did not recall any mention of an art academy, and noted that she was surprised to see that an art academy was located there as well.

Overhead Projector

Chair Blank requested staff to provide printed instructions on how to work the projector and noted that this was the third meeting that the projector malfunctioned during a presentation.

8. MATTERS FOR COMMISSION'S REVIEW/ACTION

a. Future Planning Calendar

No discussion was held or action taken.

b. Actions of the City Council

No discussion was held or action taken.

c. Actions of the Zoning Administrator

No discussion was held or action taken.

9. COMMUNICATIONS

Commissioner Pearce noted that a consultant had been selected for the Bicycle and Pedestrian Advisory Committee. She further noted that she had been selected as the Chair of that Committee.

10. REFERRALS

No discussion was held or action taken.

11. MATTERS FOR COMMISSION'S INFORMATION

No discussion was held or action taken.

12. ADJOURNMENT

Chair Blank adjourned the Planning Commission meeting at 12:15 a.m.

Respectfully,

DONNA DECKER
Secretary