



PLANNING COMMISSION MINUTES

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

APPROVED

Wednesday, December 12, 2007

*(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 December 12, 2007, was called to order at 7:01 p.m. by Chairperson Fox.

1. ROLL CALL

Staff Members Present: Donna Decker, Principal Planner; Julie Harryman, Assistant City Attorney; Wes Jost, Development Services Manager; Natalie Amos, Assistant Planner; and Cory Emberson, Recording Secretary.

Commissioners Present: Commissioners Phil Blank, Anne Fox, Kathy Narum, Arne Olson, and Jennifer Pearce.

Commissioners Absent: Commissioner Greg O'Connor.

2. APPROVAL OF MINUTES

a. November 14, 2007

Ms. Decker advised that the minutes of November 14, 2007 would be considered at the January 9, 2008.

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

Richard Schweninger addressed the Planning Commission regarding the future planned rezoning and redevelopment to increase high density residential and retail areas in the Hacienda Business

Park. He understood the Park would like to make money and that there were also existing privately owned residences within the Park. He believed the further development would radically change the quiet nature of the existing residences. He noted that these properties would continue to pay Park dues but would continue to not have any representation on the Park's Board. He noted that the Park had been unwilling to discuss the removal of the residential developments from the Park or the cessation of paying the dues. He noted that the Park had not provided annual budgets, and the residents were very concerned that the dues would increase due to additional residential development. He would like the City to discuss the homeowners' concerns with the Park management.

Steve Bursely noted that he was a member of the Valencia Homeowners Association as well as the Board of Directors. He supported Mr. Schweningen's statement and added that they had made repeated requests of the Park to initiate discussion; they anticipated going to arbitration. He believed the City should consider not rezoning this property, and he believed that treatment of the issue had been one-sided.

4. REVISIONS AND OMISSIONS TO THE AGENDA

Ms. Decker noted that Item 6.a., PDR-623, Scott Adams, would be continued to a future meeting at the request of the applicant. She noted that it would be re-noticed as a workshop in order to bring several items before the Commission prior to a public hearing.

Ms. Decker also noted that the applicant for Item 6.b., PCUP-200, John Pfund, Tri-Valley Martial Arts, had requested that the item be continued to a future meeting.

5. CONSENT CALENDAR

a. PCUP-204, Ian Fitz-Simon, Windsor Retro Corporation

Application for a conditional use permit to operate a car dealership and car storage business located at 3440 Stanley Boulevard, Suite H. Zoning for the property is C-S (Service Commercial) District.

b. PCUP-206, Norcal Volleyball Club

Application for a conditional use permit to allow the operation of an indoor volleyball facility for up to 24 players at a time, ranging in age from 12 years to 18 years, from December through June, from 9:00 a.m. to 11:00 a.m. and 4:00 p.m. to 9:30 p.m. on weekdays and from 9:00 a.m. to 9:00 p.m. on weekends, in an existing building located at 7069 Commerce Circle. Zoning for the property is I-G-40,000 (General Industrial) District.

Commissioner Blank moved to make the required conditional use findings as listed in the staff reports and to approve Cases PCUP-204 and PCUP-206, subject to the conditions in Exhibit B of the staff reports.

Commissioner Pearce seconded the motion.

ROLL CALL VOTE:

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

Resolutions Nos. PC-2007-49 and PC-2007-50 approving Cases PCUP-204 and PCUP-206, respectively, were entered and adopted as motioned.

6. PUBLIC HEARINGS AND OTHER MATTERS

a. PDR-623, Scott Adams

Application for design review approval to allow the addition and remodeling of an existing one-story single-family home floor to a two-story tall, single-family home with 8,325 square feet of building floor area; 2,215 square feet of attached garage area; and an attached 8,476-square-foot indoor tennis court located at 2751 Crellin Road. Zoning for the property is PUD-LDR (Planned Unit Development – Low Density Residential) District.

This item was continued to a future meeting at the request of the applicant.

b. PCUP-200, John Pfund, Tri-Valley Martial Arts

Application for a conditional use permit to allow a martial arts academy which would (1) include (a) up to 30 students ranging in age from four years to adult, and (b) up to four employees; (2) operate on Monday through Friday between the hours of 4:00 p.m. and 9:00 p.m.; and (3) provide (a) child transportation to the academy from elementary and middle schools, (b) an afternoon program for children between the hours of 2:50 p.m. and 6:30 p.m., (c) after-school tutoring and homework services, (d) after-school games and activities, (e) seasonal camps, and (f) full-day holiday care supervision, in an existing building located at 1262-A Quarry Lane. Zoning for the property is PUD-I (Planned Unit Development – Industrial) District.

This item was continued to a future meeting at the request of the applicant.

c. PAUP-4, Jennifer Hosterman

Application for an animal use permit to allow a red-tailed hawk to be kept in the rear yard accessory structure of an existing residence located at 2922 Chardonnay Drive. Zoning for the property is PUD-MDR (Planned Unit Development – Medium Density Residential) District.

Ms. Decker introduced Ms. Amos, Project Planner, and noted that the applicant was not present. She noted that it had taken some time for staff to become informed on the art of falconry in order to process the application. She noted that the Planning Commission had inquired several times when this item would be agendaized, and staff noted that in order to come up to speed on

licensing, falconry, and other related matters, it had been a much more lengthy process than usual. Staff had wanted to ensure presenting a comprehensive report that would provide the decision-makers the information they needed to render a decision.

Ms. Decker stated that there had been many scheduling conflicts with respect to trying to coordinate a Planning Commission meeting date with the applicant's schedule and obligations; however, staff had been requested by the applicant to bring this item forward to the Planning Commission for consideration. She believed the staff report was complete and accurate.

Chairperson Fox inquired whether the Commissioner's Handbook addressed the absence of the applicant during a public hearing and whether this was the first time that an item had been heard by the Planning Commission without the applicant being present. She noted that in the past, projects with applicants who have not been able to attend have been automatically continued. She inquired whether this was the first time a hearing item would be heard without the applicant. Ms. Decker advised that applicants generally attended hearings and that they commonly requested a continuance if they were unable to attend. She noted that there had been no substitute representative available to attend the Planning Commission meeting for this item and that the applicant had informed staff that it was acceptable to go forward with this hearing. She noted that this may appear to be unusual but that staff had the appropriate direction and request from the applicant to proceed.

Commissioner Blank indicated that he had quickly scanned the Commissioner's Handbook and did not see specific guidance regarding this issue. She asked Ms. Harryman for clarification on this matter.

Ms. Harryman noted that it is normal for an applicant who cannot appear to have the item continued, but in this case, she agreed with Ms. Decker that the hearing could be held and the item heard.

Chairperson Fox asked the Commissioners how they would like to proceed.

Commissioner Pearce noted that if the applicant had requested that the item move forward, she would like to see it move forward as well. Commissioner Olson concurred. The Commissioners indicated general agreement with Commissioners Pearce and Olson.

Chairperson Fox noted that this was the first time she had seen an item go forward without the applicant and stated for the record that the Commission understood that it was acceptable to the applicant that the item be heard without the applicant present.

Ms. Amos then presented the staff report and detailed the background, scope, and layout of the proposed application. She noted the email on the dais. She indicated that the subject site is in a PUD but that staff determined that this falls back to the R-1 district standards. She added that staff had further determined that a PUD minor modification is not required to process this animal use permit. She stated that information has also been provided on hawk attacks in other areas and are mainly in the East Coast and Great Britain. She noted that the California Raptor Center had indicated that this is unlikely to happen in particular areas such as the Bay Area.

Ms. Decker presented an overview of the information placed on the dais. She noted that Commissioner O'Connor had inquired whether a homeowners association (HOA) would govern or enforce the CC&R's. She added that staff understood that there was no active HOA within this PUD. She noted that the CC&Rs did default to state that any owner within the PUD may enforce the CC&R's as he or she saw fit. Staff believed that the applicant's request was consistent with the directive to conform to all local laws and regulations. She noted that staff had no knowledge of any owner trying to enforce various issues within the PUD. She noted that this location met the setback requirements with respect to accessory structures.

Chairperson Fox noted that the CC&R's prohibits the construction on Lots 18 and 19 of any other structure within 20 feet of their western boundary. She inquired if the subject lot was in Lot 18 or 19. Ms. Amos replied that it was not.

In response to an inquiry by Chairperson Fox regarding the meaning of the phrase in the CC&R's "which might obstruct or interfere with the rights of other owners which might be noxious, harmful, or unreasonably offensive to other owners," Ms. Harryman replied that if there was an existing HOA, the HOA Board might consider a neighbor's action that might be noxious to another. Given that there was no active HOA, a neighbor who objected to a neighbor's use would retain the private right to enforce the CC&R's.

In response to an inquiry by Commissioner Blank regarding whether an individual landowner would still be able to attempt enforcement under the CC&R's if the application were to be approved by the Planning Commission and/or City Council and given that it has federal and State approvals, Ms. Harryman replied that there are different levels of approval with different requirements to be satisfied. She confirmed that these approvals did not prevent a neighbor from attempting enforcement under the provision of the CC&R's.

Commissioner Blank inquired if a person's attempt for remedies would have to go directly to court since he or she cannot come to the City and there is no HOA Board. Ms. Harryman indicated that would generally be the case. She added, however, that she has not read the CC&R's in its entirety and noted that there might be a provision for arbitration.

In response to an inquiry by Commissioner Blank regarding whether HOA dues would still have to be paid if the HOA were to become bankrupt and if the CC&R's would still be binding. Ms. Harryman replied that disbanding an HOA was not an uncommon occurrence and that the dues would not have to be paid. She noted, however, that the CC&R's would still be binding. She added that when the City approves a project, she looks at the CC&R's and if there are maintenance responsibilities, the HOA would have to notify the City prior to disbanding.

Ms. Decker noted that an email from Chairperson Fox was placed on the dais, requesting clarification on several points. With respect to the required floor area for the enclosure ("mew"), she noted that the State Department of Fish & Game publication stated that it should be a minimum of 64 square feet, and have a minimum interior ceiling height of seven feet throughout. She noted that the document detailed the dimensions of the mew as well as the required equipment and stated that the enclosure must have adequate ventilation as well. Staff displayed a

slide of the interior of the mew which delineated the interior height of the structure. Ms. Decker noted that federal or State agents inspected the enclosures and that they would perform any necessary enforcement actions. She believed the site had been inspected and that it conformed to the necessary regulations.

Ms. Decker then described the body of articles attached to the staff report regarding hawk attacks and noted that one article cited a park in New York was using hawks to clear pigeons and that while one small dog had been plucked from the shrubs by the hawk, the dog was rushed to the veterinarian and treated for minor injuries. She noted that the account noted that the introduction of the hawks into the park was successful in clearing out the pigeons; it seemed the program had continued. She noted that other articles indicated attacks may have occurred due to the proximity of the nesting areas and how hawks are naturally in surrounding areas. She also noted that many attacks were to pigeons on the East Coast and Southern California which were reported by pigeon fanciers.

Commissioner Olson inquired if the New York incident involved a falcon or a hawk. Ms. Decker replied that it was a hawk and not a peregrine falcon. She added that falconry uses various types of hawks.

Chairperson Fox inquired whether there was a difference between a hawk and a falcon and whether a hawk is a subspecies of a falcon. Ms. Decker indicated that staff did not know all of the differences between the two.

Commissioner Blank indicated that he had done some research in that area and noted that the red-tailed hawk belonged to the family known as *falconiformes*, which indicated that it generally killed its prey with its beak. Commissioner Blank indicated that he had more information to share in relation to another email.

Ms. Decker noted the Commission asked whether the appropriate license had been obtained when the hawk was trapped and indicated staff did not have a copy of the license going back that far in the December 2005 time frame to know whether a license was obtained. Staff believes that the permit might have been obtained appropriately.

Ms. Decker noted that with regard to transport or handling, the dog leash laws required dogs to be leashed while outside the owner's property. In addition, the Pleasanton Municipal Code did not allow fowls and rabbits to roam free outside the property boundaries of the owner. She noted that hawks were not let loose outside within their neighborhood environment. When they are transported, they were placed in cages with hoods over their heads to prevent them from seeing where they were going, thereby keeping them calm during transport. She noted that the City would not require the bird to be leashed with a jesse and that it was presumed that the owner would know how to properly transport the hawk in compliance with State and federal regulations. Staff provided information to describe the practices of falconry.

With respect to another question, Ms. Decker indicated that information had been provided describing how hawks are used for hunting activities. She indicated that staff provided materials

on falconry and conditions of approval that the keeping of the hawk would need to be in accordance with State and federal laws.

Ms. Decker stated that staff did not specifically address the location where the bird could hunt and noted that and if Bishop Ranch or Shadow Cliffs and other state parks are available for this use, the applicant would need to obtain the appropriate permits.

Commissioner Blank inquired whether the Pleasanton Municipal Code was mute on the subject of hunting inside City limits. Ms. Decker believed that hunting is generally understood to be with firearms and likely defaulted to those regulations that a firearm may not be discharged within the City limits. She noted that it was her understanding that falconry would be regulated under the State requirements. Commissioner Blank noted that a bow and arrow did not need to be licensed but that a crossbow must be licensed. Ms. Decker indicated that hunting would probably be prohibited within the City limits. Ms. Harryman indicated she would need to research this. Commissioner Blank indicated that she would like to have an answer to this.

Chairperson Fox inquired whether hypothetically she would be able to trap small animals to feed to a mountain lion kept caged in a back yard. Ms. Decker replied that this issue would be likely governed by the State and federal agencies. She noted that while many people fed mice to snakes and lizards, it would be on a different degree for a python. A discussion ensued regarding other wild animals, permit requirements for mountain lions and snakes, and what is considered hunting or feeding of wild animals in captivity.

Commissioner Blank noted that families with a member allergic to furry animals often kept reptiles which eat small live rodents as part of the food chain.

Commissioner Olson noted that he frequently saw wild hawks hunting in the skies, especially in the summer, and that they were without any human supervision.

Ms. Decker noted that Exhibit F, which originated from the Internet, did not have the direct source at hand, and Exhibit E, taken from www.desertusa.com/august96/du_hawk.html, contained additional information and clarification about hawks and the art of falconry. She noted that falconry was an ancient practice that has been kept alive as a sport.

In response to an inquiry by Chairperson Fox regarding when a hawk would be leashed or fly free and whether this is occurring in open spaces in Pleasanton, Ms. Decker replied that a hawk would fly free and may be tethered on each leg with a belled leather tether called a jesse. The jesse would enable the owner to hear the bird if it left the line of sight. She noted that it would not make sense for a falconer to let loose a hawk in a neighborhood because there is no clear line of site, and fences may need to be climbed if the hawk would need to be retrieved. She indicated that falcon hunting occurred in gently rolling hills in open space. She noted that she understood that with appropriate permits, open space near Bishop Ranch, East Bay Regional Park District (EBRPD), or the Lawrence Livermore Laboratories may be used by falconers.

Ms. Harryman interjected that the Pleasanton Municipal Code had no reference to hunting or trapping with respect to hawks.

Chairperson Fox noted that on page 10 of the staff report, it is stated that hunting was not allowed in the EBRPD, which seemed to contradict Ms. Decker's statement that the EBRPD is a potential site.

Ms. Decker stated that she could not respond with details regarding sites that may be available to falconers. She noted that site was mentioned as being allowed for special permitting in order to hunt in those areas. She added that the question had been raised regarding this application being a PUD modification versus a conditional use permit. She noted that PUD's relied on the underlying zoning and the straight-zoned requirements. She added that the PUD guidelines contain clarifications that this use fell back on the R-1-6,500 zoning district, which requires a use permit.

Ms. Decker indicated that this covered the discussion of questions from Chairperson Fox that was provided to staff. She added that Commissioner Blank had also sent an email at 3:05 p.m. that staff would address regarding questions on the kingdom and species of hawks.

Commissioner Blank referenced the email and noted that he had been concerned about the use of the word "fowl" in the staff report and noted that the dictionary stated that "fowl" was any kind of bird. He noted that other definitions for "fowl" exist. He indicated that the classification of animals include *kingdom*, *phylum*, *class*, and *order*. His research revealed that the classification for *kingdom*, *phylum*, and *class* were identical for fowls and hawks; however, they split at *order*. He indicated that this was a high split. For reference in the past chicken issues, a chicken had the identical *kingdom*, *phylum*, and *class*, but split at *order*, and there is a significance difference between a hawk and a chicken. He indicated that there are eight steps in classification: *kingdom*, *phylum*, *class*, *order*, *family*, *genus*, and *species*. He noted that in the case of a wolf and a dog, *kingdom*, *phylum*, *class*, *order*, *family*, and *genus* were identical; they split at *species*. The split between a dog and a wolf took place at step six; the split between a fowl and a hawk took place at step four; he believed there was a much broader differentiator of animal types. He brought forward that there was a large difference between a wolf and a dog while they were similar in terms of classifications. He read from the Britannica and Encarta encyclopedia. It indicated that the modern usage of the term "fowl" relates to edible species, unless specifically used in the context of waterfowl or wild fowl, and is usually restricted to the common domestic fowl or chicken. He described the differences between different kinds of poultry and fowl and did not believe a hawk would be classified as a fowl unless it was edible.

Ms. Decker noted that staff's research was intended to conform to the requirements of the use permit. She added that Ms. Harryman had replied to an email by Mr. Dan Carl, which included the specific definition of "fowl," and stated that the keeping of a hawk would fall under "fowl" in terms of the use permit process. Staff did not believe it would be necessary to process an ordinance amendment or a Code amendment to include wild or exotic animals of any kind. Therefore, this project was before the Commission for a decision.

A general discussion of the term "fowl" ensued.

Chairperson Fox asked whether it is staff's interpretation that an eagle, ostrich, or a burrowing owl is a fowl, including endangered species. She inquired if staff would consider an ostrich that is being requested to stay in one's backyard a fowl. Ms. Harryman replied that staff used Webster's dictionary and did not do a technical definition; it was up to the Commission to determine if a hawk is a fowl. Ms. Harryman indicated that the Planning Commission can choose to determine that a hawk is not a fowl, similar to Commissioner Blank's research. She indicated that Commissioner Blank's sources conclude that fowl is an edible bird and the applicant's remedy may be to apply for a Code amendment. She indicated that if the conclusion is that a red-tailed hawk is a fowl, then staff would consider an ostrich a fowl and applicants would have to apply in a similar manner to determine if it was appropriate to have a fowl in a residential neighborhood as it relates to safety and all the other issues.

Chairperson Fox indicated in the use permit cases of the Hudsons and the Beckers, staff had determined according to the Pleasanton Municipal Code that a bird such as a rooster is not a fowl so that a fowl is not, in fact, any bird. This disagrees with staff's new definition of a fowl now including all types of birds.

Commissioner Pearce inquired how the Webster's definition of "fowl" had come to be used. She noted that in her research of definitions of fowl, some gave "poultry" as the first definition. Ms. Harryman replied that was the dictionary kept in the City Attorney's office. Commissioner Pearce noted that Black's Law Dictionary did not contain a definition of the word "fowl." Staff replied that Webster's dictionary is the only one staff has.

Chairperson Fox noted that in the plans for the Vineyard Corridor and the Hatsushi property, she interpreted that the City documents state what a "fowl" is. They are duck, chickens, geese, guinea fowl which are explicitly listed along with turkeys. The specific plans and City documents delineate the definition of a "large" fowl vs. a "small" fowl and confine the definition to those animals. She inquired why the City is now changing the definition of fowl when in the past, City documents specifically confined the definitions to these particular animals, which did not include a hawk.

Ms. Decker replied that she did not recall what specific plans state the City's definition of a fowl and asked Chairperson Fox to point out these definitions. Ms. Decker indicated they may only be examples of fowl rather than constituting an all-inclusive list of fowl.

Ms. Decker noted that animals and birds that people have historically kept, such as chickens, geese, and pigs, were listed; it was not the City's intent that those constitute only fowl. Likewise, the list including sheep and cattle would not preclude any other kind of livestock considered for agriculture, such as llamas, horses, goats, or Shetland ponies. Similarly, these limitations generally addressed the numbers of birds or animals.

Chairperson Fox referred staff to page 44 of the Vineyard Corridor Specific Plan which defines "large fowl" by placing in parentheses, turkey and goose. Next to "small fowl" in parentheses are the words chicken, ducks, and guinea fowl. Chairperson Fox also read from the Happy Valley Specific Plan and indicated that fowl is defined as chicken, ducks, geese, and turkeys.

Ms. Decker noted that staff would interpret these documents to indicate merely examples of what large and small fowl could be as they relate to size of fowl.

Commissioner Pearce inquired how the Webster's definition of "fowl" had come to be used. Ms. Harryman replied that was the dictionary kept in the City Attorney's office. Commissioner Pearce noted that Black's Law Dictionary did not contain a definition of the word "fowl."

Ms. Decker noted that animals and birds that people have historically kept, such as chickens, geese, and pigs, were listed; it was not the City's intent that those constitute only fowl. Likewise, the list including sheep and cattle would not preclude any other kind of livestock considered for agriculture, such as llamas, horses, goats, or Shetland ponies. Similarly, these limitations generally addressed the numbers of birds or animals.

THE PUBLIC HEARING WAS OPENED.

Chairperson Fox noted that staff has previously indicated that the applicant was not present and thus invited members of the public to speak on this item.

Commissioner Blank disclosed that he had exchanged several emails with Mr. Carl and had a telephone conversation relative to the subject.

Chairperson Fox noted that there appeared to be technical difficulties with the camera and the overhead projector.

Dan Carl noted that he appreciated the staff and Commission work that had gone into the review of this item. He noted that after many months since a simple question on September 2006, the Commission now is hearing this item. He appreciated staff's and the Commissioners' time and stated that he realized that Commissioners have thankless jobs, people do not always agree or are upset with decisions, the Commission makes tough decisions which can get overridden if someone does not like the decision. He thanked the Commission for its service and said it is appreciated.

[Staff was unable to assist in resolving the technical presentation issues and was not able to make copies because there was a problem with the toner.]

A recess was called at 8:15 p.m. to enable the speaker to display screen shots for his statement.

Chairperson Fox reconvened the meeting at 8:20 p.m.

Chairperson Fox apologized and noted that the visual projector appeared to not be working and staff was not successful in trying to get it to work; thus, there would be no visuals.

Mr. Carl believed that good municipal codes and consistent enforcement were the same as good fences, which made for good neighbors, leading to happy and safe neighborhoods. He spoke in opposition to this application, asked that it not be approved, and asked that it be acted on at this meeting. He noted that the initial notice had been made 15 months ago and added that it would

be impossible to gather all the data. He believed that there was an implied and explicit expectation that when a house is bought in a residential neighborhood in Pleasanton, a resident knows what could be in his or her own yard and what was in the neighbor's yard. He believed that there are things one can expect and not have to worry about. He believed that a wild raptor or wild animal on the other side of the fence was not something he would expect in a residential neighborhood. He asked if the City had an enforceable and clear Municipal Code as it relates to animals. He believed the precedent would be set that it would be acceptable to have a caged, wild animal in the back yard and that the definition of "fowl" would be so broad as to allow troublesome birds. He indicated that he did not want this case to be used as a precedent and inquired whether a deadline provision would be applicable in any Municipal Code violations. He indicated his frustration that the project was being heard 14 months later. He would like the Code to be clearly defined, and a clock needs to start ticking for resolution of Municipal Code violations.

In response to an inquiry by Mr. Carl regarding whether hunting was allowed in Pleasanton, Ms. Harryman replied that hunting was not mentioned in the Municipal Code, and, therefore, staff looked to the State laws.

Mr. Carl noted that whether or not an election was involved in the identification process, it did not change the fact that the City had agreed there was a Municipal Code violation which he would like to see addressed. He believed that raptors were beautiful and that they should be able to live free and wild. He believed this was a blood sport and that all blood sports should be banned. He did not differentiate in his mind between this activity and dog fighting or cockfighting. He noted that all Scandinavian countries have banned hawking because they equated it to dog fighting and cockfighting. He hoped that the applicant could be separated from the issue itself. His primary concern was safety, and he was very concerned about hawk attacks. He noted that UC Davis and the Lindsay Wildlife Museum stated that while hawk attacks were infrequent, they did occur. He noted that wild animals or birds that had been in the care of humans prior to being released tended to become confused and may be more aggressive because they had lost their natural fear of humans. He noted that Lindsay Museum staff did not release birds back into the wild for that reason.

Mr. Carl did not believe that a hawk equaled a fowl and noted that numerous State agricultural codes were very specific with respect to hawks, fowls, chickens, ducks, and geese; the State recognized fowl as a thing for consumption. He was concerned that the keeping of hawks would jeopardize pending real estate transactions and noted that this issue affected the entire neighborhood. He noted that there were several emails in the public record which discussed the applicant tossing live quail out of season and without a license to the hawk in the hawk enclosure. He inquired whether that was hunting without a license. He noted that UC Davis and Lindsay Wildlife Museum used dead prey.

Mr. Carl believed the question of whether a caged wild animal should be acceptable in a residential neighborhood should be a clear yes-or-no issue. He believed the question of sunset provisions should be clearly addressed. He noted that several friends of his had wished to speak but had been intimidated and did not want to risk some of their standing; they were concerned

about the animal rights issues. They believed that because the animals could not speak for themselves, it would be up to the humans to determine whether this was a proper practice.

Bill Rose noted that he was not a neighbor of the applicant but was a long-time bird-watcher; he noted that much of current knowledge about raptors was due to the falconers. He noted that they had rehabilitated injured birds and that any responsible falconer would not fly his or her bird in a residential neighborhood. He noted that attacks are generally provoked by some action, such as getting too close to a nest, and added that because a Chihuahua resembled the hawks' natural prey, he would not take a Chihuahua into the wild. He noted that raptors were wild birds, not domesticated animals.

THE PUBLIC HEARING WAS CLOSED.

In response to an inquiry by Chairperson Fox regarding whether any permits for wild animals such as a mountain lion, wolf, or coyote have ever been issued in Pleasanton, Ms. Amos replied that had not been found within staff's research.

In response to an inquiry by Commissioner Blank regarding whether there was an issue of federal pre-emption in this case, Ms. Harryman replied that there was not. She added that the fact that the applicant was State-licensed as a falconer did not automatically grant the ability to keep a hawk in Pleasanton, and that the City was able to regulate the matter via a conditional use permit.

In response to an inquiry by Chairperson Fox regarding emails by the applicant describing hunting and training, Ms. Decker understood that there were private properties where she was allowed to hunt and train Ariel, the hawk. She added that the release of the prey was part of falconry, which was both an art and a sport. She noted that the release of live prey was part of the bird's training and that feeding a live mouse to a snake was considered to be feeding, as opposed to hunting. She added that free lofting and the kill of live prey took place in the mew, which is large enough so that the bird can adequately spread its wings during free lofting and exercise without being tethered.

Commissioner Olson noted that this particular bird was near death when captured near the Oakland Airport. He viewed this as a rehabilitation project, as stated in the staff report.

Commissioner Blank noted that when a bird was being rehabilitated by specialists for release into the wild, it was generally not exposed to humans so as not to remove its natural, instinctive fear of humans.

Chairperson Fox noted that another email described another hawk released to the wild by the applicant after two days. Ms. Decker noted that the applicant had this bird for approximately two years and that it was anticipated that it would return to the wild after another year or two.

In response to an inquiry by Commissioner Pearce regarding how the live quail were obtained, Ms. Decker responded that she did not know but believed that there were probable sources available and that they were not being trapped.

In response to an inquiry by Chairperson Fox regarding whether the applicant had a number of quails in her backyard, Ms. Decker replied that she did not know but understood that the applicant had a source for live feed for the hawk. She noted that using the live feed in the mew was not a frequent occurrence and that it was part of the raptor's training. Staff did not see any evidence of quail being maintained and believed that the applicant had a source of live feed.

In response to an inquiry by Commissioner Blank regarding exotic animal ordinances in surrounding communities, Ms. Decker replied that ordinance amendments were often done based on need. She noted that the City was aware of these ordinances but did not do an exhaustive search for examples. She added that it was likely these ordinances were developed based on a need in those communities, similar to what the City of Pleasanton has experienced as well, for example, for pot-bellied pigs. She added that the City would have the ability to craft an ordinance amendment, which would go before City Council. She noted that if the Planning Commission would like to continue the item in order to perform research regarding other ordinances in other communities, staff would be able to return with the results of a nationwide search of exotic animal ordinances. She noted that there were 700 falconers nationwide and felt optimistic that examples could be produced.

Chairperson Fox noted that San Ramon had a wild animal ordinance.

Commissioner Blank noted that he was troubled by the application, more on technical grounds than anything else. He did not believe that a wolf would be allowed to be kept on leash when it was out of an enclosure and noted that a hawk and a fowl were very different in terms of biological classifications. He noted that he would not want a chicken coop next door to him, and if that were to be disclosed during a real estate transaction, he would not buy the house. He noted that he frequently observed hawks and turkey buzzards hunting in the back hills from his home, which was their nature.

Commissioner Pearce agreed with Commissioner Blank's comments, respected the art of falconry, and was not entirely opposed to the concept. She had trouble fitting this application into an ordinance which addressed fowl and noted that one dictionary defined "fowl" as "all birds," and another defined "fowl" as "poultry." She noted that there was no consistency among the definitions and that she tended to be more conservative. She did not believe that a hawk belonged in a fowl ordinance and would prefer to discuss a Code amendment for wild and exotic animals.

Commissioner Olson noted that he would not want to live next door to a chicken coop but would not have a problem living next door to this use. He had exposure to falconry in the past and had accompanied a friend who trained a peregrine falcon. He did not believe this was a serious safety issue and added that his small Shih Tzu dog could have been taken by any of the wild hawks near his home in town but did not believe it plausible. He agreed with Commissioner Pearce's assessment that this should not be part of the "fowl" definition and would support a Code amendment to address this issue directly. He was opposed to rejecting this use out of hand and did not see it in any way as equivalent to cockfighting; he added that there was no gambling,

nor was it a group affair. He would like the legal side of this issue to be cleaned up and addressed in that way.

Commissioner Narum noted that her former brother-in-law was a master falconer and that she would feel comfortable living next to a falcon; she would have more concerns living next door to chickens. She did not believe this was a serious safety issue and added that a Code amendment would be necessary to properly identify the use, as opposed to using the definition of “fowl.” She would like the conditions of approval to specify that the use be limited to one falcon at a time.

Chairperson Fox noted that her opinion was more aligned to Commissioners Blank and Pearce and believed that developing a Code amendment to address a wild animal ordinance was another discussion. She believed that the Commission agreed that a hawk was not a fowl and did not believe the conditional use findings could be made under the Municipal Code. She believed the current application should be denied on that basis and that the Planning Commission could not create entries to the Municipal Code. She would like staff to return with a wild animal ordinance so the Commission may consider this application under those parameters.

Ms. Decker recommended that the Planning Commission may wish to consider continuing this item so that staff may return with examples of different wild animal ordinances. She noted that the Code amendment that allowed up to four chickens was specific, but required a use permit. The Code amendment would not read that it was by right, but that a conditional use permit may be required along with the ordinance.

Commissioner Blank noted that if this item were to be continued and the Commission adopted an animal ordinance, the conditional use permit finding under the fowl item could not be made anyway. He believed that the only option would be to not approve the application and, as part of the motion, request that staff return with alternate language.

Chairperson Fox understood that the passage of a new ordinance would require two readings and time. Ms. Decker noted that should the passage of a new amendment be prioritized, considered, and approved, staff would support the existing application be modified rather than have the applicant submit a new application.

Chairperson Fox noted that she supported denying this application and then discussing a Code amendment separately.

Commissioner Blank moved to deny PAUP-4 as the required use permit findings could not be made as the hawk did not conform to the definition of “fowl.”
Chairperson Fox seconded the motion.

In response to an inquiry by Commissioner Narum regarding the next step, Ms. Decker noted that the Planning Commission would need to request that staff return with language or examples of an ordinance amendment(s); she noted that if the City Council should uphold the Planning Commission’s decision if appealed, the applicant would probably need to remove the hawk from the premises.

Ms. Harryman noted that if the City Council were to uphold the Planning Commission's decision, she did not believe the applicant would need to remove the hawk from the property if the applicant submitted an application for a Code amendment.

Ms. Decker noted that Code amendments were generally initiated by staff because of a need but that members of the community may initiate the discussion as well. She clarified that processing Code amendments were prioritized by the City Council.

In response to an inquiry by Chairperson Fox regarding whether the applicant could request a variance, Ms. Decker replied that would not be possible because variances were processed for site development standards; this was a use, and staff interpreted the Code as such. She understood that the Commission's general opinion was that the hawk was supported, but that the conditional use permit findings could not be made under the definition of "fowl." She further understood that the Commission would like staff to process a Code amendment to address a wild animals ordinance. She noted that it was not in staff's capacity to follow the Planning Commission's request for a Code amendment as this was an internal discussion and subject to the City Council's determination of its priority. The Council may or may not direct the creation of a Code amendment to keep a hawk in an R-1 district. She cited the example of the residential sprinkler ordinance recommended by the Planning Commission, which has not been processed as a priority by the City Council.

Commissioner Blank believed the wild animal ordinance should be addressed and did not believe that this would be the only occurrence of this kind of use.

Commissioner Narum would rather continue the item.

ROLL CALL VOTE:

AYES: Commissioners Blank, Fox, and Pearce.

NOES: Commissioners Narum and Olson.

ABSTAIN: None.

RECUSED: None.

ABSENT: Commissioner O'Connor.

Resolution No. PC-2007-51 denying Case PAUP-4 was entered and adopted as motioned.

7. MATTERS INITIATED BY COMMISSION MEMBERS

Wild Animal Ordinances in the Bay Area

Commissioner Blank requested that staff bring back to the Commission, without the excessive expenditure of staff resources, as much relevant data as possible regarding cities that have falconry laws, particularly in California. Ms. Decker noted that there were no local falconry laws but that they fell under State and federal laws. The keeping of raptors would fall under wild animal ordinances. She noted that staff would return with examples of such ordinances.

Chairperson Fox noted that several ordinances discuss the various classifications and species with respect to what would be allowed under rehabilitation or permanent use.

- a. Tabled Motion: Consideration of whether to take the motion made by Commissioner Olson on July 11, 2007, from the table; if majority support to do so, then consider Commissioner Olson's July 11, 2007 motion.

**Commissioner Olson moved to remove his original motion from the table.
Commissioner Narum seconded the motion.**

ROLL CALL VOTE:

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

NOES: None.

ABSTAIN: Commissioner Fox.

RECUSED: None.

ABSENT: Commissioner O'Connor.

The motion passed, and the original motion was removed from the table.

Commissioner Narum then removed her second from the original motion.

The original motion died for lack of a second.

Clubhouse Drive Fence Color

Commissioner Narum noted that there was an item during the Zoning Administrator's hearing addressing a fence on Clubhouse Drive. She did not recall an approval which allowed the color of the fence and inquired whether there was follow-up regarding approved colors.

Ms. Decker noted that in order to get a final building permit, staff visited the site with the conditions of approval and compared the color samples to the actual materials. She noted that even with day lamps, paint colors may look different from what was presented during the meeting. Staff would be happy to determine whether there was substantial conformity. She added that the Planning Director had the authority to make that determination.

League of California Cities Planning Conference

In response to an inquiry by Commissioner Blank regarding the next conference, Commissioner Pearce replied that it would be held in March in Sacramento.

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

No discussion was held or action taken.

8. MATTERS FOR COMMISSION'S REVIEW/ACTION

a. Future Planning Calendar

Commissioner Narum noted that she did not see the application of Bill Wentworth requesting the rezoning of three lots to six lots at 1157 Happy Valley Road and inquired whether it had been dropped.

Ms. Decker replied that the project was still active but an application for a PUD has yet to be filed. Accordingly, it has not been scheduled.

b. Actions of the City Council

No discussion was held or action taken.

c. Actions of the Zoning Administrator

No discussion was held or action taken.

d. Election of Planning Commission Chair and Vice Chair for 2008

Commissioner Pearce nominated Commissioner Blank as Planning Commission Chair for 2008.

Chairperson Fox seconded the motion.

ROLL CALL VOTE:

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

NOES: None.

ABSTAIN: Commissioner Blank.

RECUSED: None.

ABSENT: Commissioner O'Connor.

The motion passed.

Commissioner Narum nominated Commissioner Pearce as Planning Commission Vice Chair for 2008.

Commissioner Olson seconded the motion.

ROLL CALL VOTE:

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

NOES: None.

ABSTAIN: Commissioner Pearce.

RECUSED: None.

ABSENT: Commissioner O'Connor.

The motion passed.

- e. Adoption of Planning Commission Schedule of Meeting Dates for 2008

Commissioner Pearce noted that October 8, 2008 fell on the eve of Yom Kippur. Ms. Decker noted that staff would look into alternate meeting dates for the month of October.

Ms. Decker noted that the special meeting would not be scheduled for January 30, 2008 because the General Plan would not be ready to return to the Planning Commission on that date.

Commissioner Blank moved to approve the Planning Calendar for 2008, provided that staff make an adjustment for Yom Kippur so that two meetings may be held in October. Commissioner Pearce seconded the motion.

Commissioner Narum suggested adding an additional meeting during the holidays.

Commissioner Blank suggested that an additional meeting be allowed per quarter, at staff's discretion.

Ms. Decker noted that would not be practical to place on an adopted calendar. She added that there will be three meetings in February and March, and there may be a third meeting in April as well. Staff would hesitate to schedule additional meetings at this time.

ROLL CALL VOTE:

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

The motion passed.

10. REFERRALS

No discussion was held or action taken.

11. MATTERS FOR COMMISSION'S INFORMATION

- a. Brief report on conferences, seminars, and meetings attended by Commission Members.

Commissioner Pearce noted that December 17, 2007 will be the first meeting of the Bicycle and Pedestrian Committee.

Ms. Harryman noted that the agenda highlights will be published in the paper.

12. **ADJOURNMENT**

Chairperson Fox adjourned the Planning Commission meeting at 9:50 p.m.

Respectfully,

DONNA DECKER
Secretary