



**MINUTES  
FREMONT PLANNING COMMISSION  
REGULAR MEETING OF APRIL 28, 2016**

**CALL TO ORDER:** Chairperson Salwan called the meeting to order at 7:00 p.m.

**PRESENT:** Chairperson Salwan, Commissioners Bonaccorsi, Dorsey, Karipineni, Leung, Pentaleri

**ABSENT:** Commissioner Reed

**STAFF PRESENT:** Wayne Morris, Assistant Planning Manager  
Prasanna Rasiah, Senior Deputy City Attorney  
Kristie Wheeler, Planning Manager  
David Wage, Associate Planner  
James Willis, Planner II  
Courtney Fox, Recording Clerk  
Chavez Company, Remote Stenocaptioning  
Napoleon Batalao, Video Technician

**APPROVAL OF MINUTES:** None

**DISCLOSURES** **Commissioner Bonaccorsi** drove by the sites for items 3 and 4 and had a conversation with former mayor Morrison regarding item 3. **Commissioner Karipineni** drove by the site for item 3. **Vice Chairperson Leung** drove by the sites for all items. **Chairperson Salwan** spoke with the applicant for item 1. **Commissioner Pentaleri** drove by the site for item 3. **Commissioner Dorsey** drove by the site for item 3.

**CONSENT CALENDAR**

THE CONSENT CALENDAR CONSISTED OF ITEM NUMBERS 1 AND 2.

ITEMS ON CONSENT WERE MOVED TO PUBLIC HEARING AS THERE WERE SPEAKERS FOR BOTH ITEMS.

**PUBLIC HEARING ITEMS**

Item 1. **VISTA GRANDE - 822 Hunter Lane - PLN2016-00127** - To consider Vesting Tentative Parcel Map No. 10451 for the subdivision of one existing ±1.59 acre parcel into three single-family residential lots, each approximately 21,000 - 27,000 square feet, located in Planned District P-90-17 in the Mission San Jose Community Plan Area, and to consider a categorical exemption from the requirements of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15332 (In-Fill Development Project).

**Commissioner Karipineni** recused herself from the item and stepped down from the dais.

**Chairperson Salwan** opened the public hearing as there were two members of the public that wanted to speak.

**Joanna Lung**, resident, stated she is opposed to the project as she has serious concerns about the possible environmental impact due to the oak trees and burrowing owls which were a protected species. She stated she was also concerned about the 1998 major landslide and reservoir that was very close to the site. She indicated that they had been experiencing a rise in crime and was worried about the potential impact the development could bring. She asked the Commissioners to focus on reducing crime rates and creating recreational spaces for the residents instead of overgrowing the developments. Also, she asked the Commissioners to preserve the last remaining green in the Mission area.

**Dan Tien**, resident, stated he was opposed to the project as well and agreed with Ms. Lung. He stated traffic on Mission Boulevard was already really bad and it was dangerous for the children who were walking and biking in the area. He felt that the Commission should focus on something else and not more residences in the area.

**Chairperson Salwan** closed the public hearing.

**IT WAS MOVED (PENTALERI/DORSEY) AND CARRIED BY THE FOLLOWING VOTE (6-0-0-1-0) THE PLANNING COMMISSION – CONTINUED TO MAY 12, 2016 PLANNING COMMISSION HEARING.**

The motion carried by the following vote:

AYES: 6 – Salwan, Bonaccorsi, Dorsey, Leung, Pentaleri  
NOES: 0  
ABSTAIN: 0  
ABSENT: 1 – Reed  
RECUSE: 1 – Karipineni

**Commissioner Karipineni** returned to the dais for item 2.

Item 2. **GENERAL PLAN CONFORMITY FINDING – Portion of APN 501 180000150 - PLN2016-00291** - To consider a General Plan Conformity Finding to allow the sale

of a City-owned property located in the Centerville Community Plan Area, and to consider a finding that this action is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15378, in that it is not a project as defined by CEQA.

**Planning Manager Wheeler** gave a brief history of the item and emphasized that there was a not a development proposal included with the item.

**Chairperson Salwan** clarified with **Planning Manager Wheeler** that they were not making a decision on a particular project.

*Planning Manager Wheeler stated correct.*

**Chairperson Salwan** clarified that if there was a project proposal in the future that it would come before the Planning Commission at that time.

*Planning Manager Wheeler stated correct.*

**Chairperson Salwan** opened the public hearing.

**Shabnam Barati**, resident, asked the Commission to not take action hastily at that time. She stated the parcel in question was a landlocked parcel and the only way to get to the parcel was through a temporary road that would connect to Isherwood Way. She had concerns about the road because she felt Isherwood Way was already at capacity and traffic was horrible it took her six traffic lights to be able to get to the first traffic light. She stated the schools were already at capacity and that any additional children would have to go to different schools then what was close to the area.

**Pricilla Mok**, resident, stated the area was already saturated with traffic and it was unsafe. She stated she felt the temporary road would be an invitation to crime and additional homeless that had already been living in the creek. She asked the Commission to reconsider the temporary road and the conformity finding.

**Satyen Lele**, resident, stated he had concerns about a possible new development would increase traffic on Isherwood Way and his biggest concern that the schools were already overcrowded. He indicated that his daughter had to go to another school for her first grade because she was overflowed from the elementary. He asked that the Commissioners take into consideration the traffic and overcrowding in the area.

**Commissioner Dorsey** asked that the speakers say their names when they speak so that the Commissioners may record their names as they take notes.

**Beverly Chin**, resident, stated she agreed with the previous speakers and stated they understood the proposal but that their concern was “if the property is sold a developer will want to build, hopefully single family low density housing, and their concern also was that the quality would measure up to the standard is now in their developer”. She stated she had a concern for safety for their neighborhoods as the residents had raised their own money for security cameras and if the cul-de-sacs were opened up

the security cameras would not be as effective due to the addition of more people. She also expressed her concern over the traffic.

**Xingting Guo**, resident, stated he agreed with what the previous speakers and had nothing new to add.

**Chairperson Salwan** asked that anyone wishing to speak bring their speaker card to the secretary.

**Russ Yee**, resident, stated he has the only home with a front door that faced Isherwood Way. He talked about a traffic study from 30 years ago and there were 10,000 cars per a day that drove down Isherwood Way which meant a car passed his home every nine (9) seconds over a 24 hour period. He stated he understood that the Commissioners were only voting on whether the sale conforms to the General plan but they would like the Commissioners to take more time and give it more thought before making any decisions. He asked that they consider another access point for the temporary road then Isherwood Way before making any decisions.

**Flavio Poehlmann**, resident, stated there was already an issue with overcrowding at the schools as many neighbors cannot get their children into the elementary school in their area and have to drop their children off to different schools and then commute to peninsula due to the lack of high tech jobs in Fremont. He stated they did not need more people but more schools. He raised concerns over the traffic on Isherwood and indicated that after 12 minutes in traffic he could still see his house. He expressed concerns that continuing to develop the area was taking away from the quality of life and schools.

**Melodye Khattak**, resident, stated she thought that they were “putting the cart before the horse” to even think about selling the property and that they should wait until the East/West corridor had been built to see what effects on traffic the corridor will have. She indicated that the ground where the proposed temporary road was to be built was unstable and when the land is tilled to remove weeds on the property the residents on Barnard Drive feel their houses shake. She stated they had been told, in 2013, that the parcel where the road was purposed was designated as parkland to protect the various wildlife on the parcel.

**Rangin Khattak**, resident, stated he had a problem with the processes between the Planning Commission and the City Council and which did what. He reiterated that the parcel was designated as parkland and he asked where in California you could put a dirt road for construction purposes. He asked the Commission to wait to sell any land until the East/West corridor is built and find out how much land is left and then think about whether a development is really worth it.

**Dormaine Gerome**, resident, stated she knew that the land was designated a linear park in 2013 and asked if the Commission planned on swapping that park property with another. She stated they should not develop the land until the East/West corridor

has been built. She stated she was against the temporary road easement and that the planning Commission should wait until the East/West corridor was built before allowing any development on the parcel. She stated the parcel was higher than the homes on Barnard Drive and when the field is stepped on the soil sinks and when the field is plowed their homes shook. She also indicated that the homeless encampments were still a problem despite many attempts to clean them up by her and City staff.

**Rita Leung**, resident, stated she agreed with the previous speakers and that the traffic on Isherwood Way was horrible. She stated the homes on Barnard Drive were at a lower elevation than the proposed road and was worried about a possible development where people would be overlooking their homes and asked where the privacy was. She reiterated that in 2013 the land was designated a low impact park.

**Robert Czerwinski**, resident, stated the parcel needed to remain low density residential and wanted to ensure that if new homes were built they matched the quality of the existing homes. He stated it was premature to consider selling or developing the parcel until the East/West corridor was built. He also expressed concerns about the environmental mitigation obstacles related to the Niles groundwater basin, tunneling under ACE, Union Pacific and BART tracks. He offered to take the Commissioners on a walk/drive tour of the East/West Corridor.

**Rosa Cheung**, resident, requested the Commissioners withdrawal the proposal. She stated she was retired and had done a lot of research before buying her home for retirement and did not want to see the green open space behind her residence disappear. She also raised concerns over traffic.

**Lou Malito**, resident, stated he did not agree with the plan/policy with the City saying “underutilized land”. He raised concerns that Isherwood was the only through street and asked the Commissioners not to “put the cart before the horse” by approving any new development until additional streets are built and the East/West corridor was completed. He raised concerns about traffic and pollution. He stated his concern for the natural resources that were on the property.

**Kathy Arao**, resident, stated she was a native Fremont resident who lived here her entire life. She stated she could not believe what she was seeing with the development in the City and the three-story monstrosities that were being built and expressed concern that the City was losing its character. She stated the schools were overcrowded and it was difficult to get children into them. She expressed her concerns with the homeless that live in the creek and she felt that the money could be better spent elsewhere rather than selling the land.

**Lily Mao**, resident, stated she opposed to the proposal due to her concern about the wildlife such as deer, birds and frogs which called the land home; she asked the Commissioners where they would go. She also expressed her concerns with the traffic.

**Jinjun Deng**, resident, stated he agreed with the concerns that others raised and re-expressed his concern and frustration with traffic. He asked that the Commissioners reconsider the proposal and make the residents proud.

**Chairperson Salwan** closed the public hearing.

**Commissioner Bonaccorsi** asked what their discretion was.

*Planning Manager Wheeler* stated the proposal in front of them was a finding of General Plan conformity which would allow the City to sell the property. She stated City Council had proposed to sell about a dozen surplus properties to fund the downtown and Warm Springs City initiatives. The first step was for the Planning Commission to find the sale of the parcel in conformance with the General Plan. The City would have to offer the property to non-profit agencies and other outside government agencies before they could auction the property off to a developer. She stated they had received a letter from East Bay Regional Park District (EBRPD) requesting to be part of the process to make an offer to purchase the property. She stated the parcel was low density which did conform to the General Plan. She reiterated that the Commissioners are only voting as to whether or not the sale of the land is in conformance with the General Plan.

**Commissioner Bonaccorsi** asked how a General Plan Amendment is noticed to the public and if there was any input from the Isherwood community at the public hearing in 2011 that changed the zoning of the parcel to low density residential.

*Planning Manager Wheeler* stated in the case of a General Plan amendment where there were many properties being effected there would not be an individual notice that would go out to property owners; however it would have been noticed in the newspaper and other methods.

**Commissioner Bonaccorsi** clarified the parcel was previously earmarked for the Route 84 expansion and he asked what the parcel would have looked like if Route 84 had gone in.

*Planning Manager Wheeler* stated she did have the history and therefore could not speak to his question.

**Commissioner Bonaccorsi** stated there was opposition to the Route 84 expansion which resulted in the East/West corridor alternative. He asked if she knew if this is what caused the surplus designation for the property.

*Planning Manager Wheeler* stated yes.

**Commissioner Bonaccorsi** clarified that the General Plan was already at a certain designation for the parcel and asked to confirm that they are required to make the finding as part of State law.

**Senior Deputy City Attorney Rasiah** stated yes, that the finding was the first step in a very long process that was required for public agencies that were disposing of properties. He stated the Commissioners were being asked to look at the General Plan and make a finding that the sale of the surplus property was consistent with the General Plan. He stated the property would first have to be offered to public agencies and that the sale of the property would be reviewed by the City Council at a later date.

**Commissioner Bonaccorsi** asked to clarify that what they were not deciding that the property was surplus property that should be sold but that City Council had already decided to sell the property.

**Senior Deputy City Attorney Rasiah** stated yes.

**Commissioner Bonaccorsi** asked to clarify that if they say that the property conforms to the General Plan they are not endorsing or authorizing the disposing of the property.

**Senior Deputy City Attorney Rasiah** stated yes they would only be deciding that the disposing of the property was consistent with the General Plan.

**Commissioner Bonaccorsi** asked if residents wanted to encourage Fremont Unified School District (FUSD) to make an offer that they could do that. He asked if an auction did occur was any proposal subject to an environmental impact study.

**Senior Deputy City Attorney Rasiah** stated yes.

**Commissioner Dorsey** asked about the process for the sale of the property, was the City considering bids or was it certain monetary.

*Planning Manager Wheeler* stated the property was appraised and that they would be looking for a price near the Fair Market Value.

**Commissioner Dorsey** stated the best possible scenario would be that the EBRPD would place a high enough bid the City would accept. She asked if the bids were made public.

**Senior Deputy City Attorney Rasiah** stated the sale would go before City Council.

**Commissioner Dorsey** asked if it would be an opportunity for residents of the neighborhood to have public input.

**Senior Deputy City Attorney Rasiah** stated yes and in the event a project was purposed it would come back before the Planning Commission and the residents would have additional opportunities to provide comment.

**Commissioner Pentaleri** reiterated they were to assess the surplus of the land and whether it conforms with the General Plan under State law. He stated they are asked to check that City Council is taking action in accordance with the General Plan, and that they were not reviewing whether or not development on the property was appropriate or the timing of development.

**Chairperson Salwan** asked if staff had looked into alternatives to the access road.

*Planning Manager Wheeler* stated what was before them was the General Plan conformity finding and that they were not approving an access road. She stated if there were to be a development in the future an access road be a part of the project plan and would have to be approved by the Planning Commission.

**Chairperson Salwan** asked if they were reviewing that the low density residential zoning conformed to the General Plan.

*Planning Manager Wheeler* stated yes.

**Chairperson Salwan** asked how the linear park that was talked about would interface with the parcel that was being surplus.

**Assistant Planning Manager Morris** stated he was unsure what linear park the residents had been referring to. He stated there was a piece of parkland that the City

had transferred a couple of years ago and the interface with the parkland would be reviewed at the time a development proposal was submitted.

**Commissioner Leung** clarified what they could decide that night was that the surplus of the property conforms with the General Plan which essentially the City Council had already voted that the property would be sold. She stated she appreciated that comments and ideas from the neighborhood and encouraged them to continue to come out throughout the process.

**Commissioner Karipineni** stated she appreciated the residents coming out early in the process and recognized that the best and most effective time would have been during the General Plan update in 2011.

**Chairperson Salwan** stated they had a very small decision to make that night and it was merely that the parcel was in conformance with the General Plan. He stated he agreed with residents about the traffic issues and was supportive in staff finding.

**Commissioner Bonaccorsi** moved to approve staff recommendation. He thanked the neighborhood for coming out and provided comment. He stated they were not endorsing the traffic problems or the problems with the homeless. He stated they had a very narrow administrative decision and he asked that the residents keep engaged with the process and urged them to go to EBRPD and urge them to give a fair market value bid. He stated if the decision was not appealed the 60 days period would begin.

*Senior Deputy City Attorney Rasiah stated the 60 day period was independent of the finding and that the decision was appealable to City Council.*

**Commissioner Bonaccorsi** asked when the sixty (60) day period would begin.

*Senior Deputy City Attorney Rasiah stated he did not know the exact date but that he believed that they were in the midst of the sixty (60) day period.*

IT WAS MOVED (BONACCORSI/PENTALERI) AND CARRIED BY THE FOLLOWING VOTE (6-0-0-1-0) THE PLANNING COMMISSION – FOUND THAT THE GENERAL PLAN CONFORMITY FINDING IS NOT SUBJECT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PER CEQA GUIDELINES SECTION 15378, IN THAT IT IS NOT A PROJECT AS DEFINED BY CEQA;

AND

FOUND THAT THE PROPOSED DISPOSITION OF A 9.34-ACRE PORTION OF APN 501 180000150 AS SHOWN ON EXHIBIT “A” IS IN CONFORMANCE WITH THE GENERAL PLAN AS DESCRIBED IN THE STAFF REPORT.

The motion carried by the following vote:

AYES: 6 – Salwan, Bonaccorsi, Karipineni, Leung, Pentaleri  
NOES: 1 – Dorsey  
ABSTAIN: 0  
ABSENT: 1 – Reed  
RECUSE: 0

**PUBLIC/ORAL COMMUNICATIONS** None

- Item 3. **UNIVERSAL FREMONT MIXED USE - 38239 Fremont Boulevard - PLN2016-00045** - To consider a Discretionary Design Review Permit, Conditional Use Permit, Vesting Tentative Tract Map, and Private Street to allow the demolition of existing residential buildings and construction of a new mixed use development including 1,787 square feet of commercial space and seven multifamily residential units located in the Centerville Community Plan, and to consider a categorical exemption from the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15332, In-Fill Development Projects.

**Planer II Willis** gave a brief presentation on the item.

**Commissioner Bonaccorsi** clarified that none of the mixed-use project would sit on the rear 25% of the lot that was currently zoned as low density residential.

*Planner II Willis stated correct.*

**Commissioner Bonaccorsi** asked total project is 22,747 square feet of development.

*Planner II Willis stated that was the lot size.*

**Commissioner Bonaccorsi** asked if only 1,747 was devoted commercial space which was less than 10% of the site.

*Planner II Willis stated correct.*

**Commissioner Bonaccorsi** asked under what basis can you take one portion of the space that was zoned as C-O and convert to a residential space that is out of character with the rest of the neighborhood.

*Planner II Willis stated mixed-use was allowed under the Commercial zoning with a Conditional Use Permit (CUP). The project would need to provide a commercial component at the street frontage and meet certain size and depth requirements and the project met the minimum required commercial component.*

**Commissioner Bonaccorsi** asked what the external standards that stated this project met the minimum requirement.

**Assistant Planning Manager Morris** stated 50 percent of the frontage must be commercial and it must be 50 feet in depth.

**Commissioner Bonaccorsi** asked if the Commission would be approving a CUP that night.

*Planner II Willis stated it was part of what was before them.*

**Chairperson Salwan** opened the public hearing and invited the applicant to the podium.

**Stuart Welte**, architect and applicant, stated their company had been designing mixed use properties for the past 20 years because it tended to be a living environment that fostered various lifestyles and was sustainable. He indicated that the property was zoned to allow mixed-use and since a good part of the surrounding area was residential they felt that a mixed use development would fit in with the current neighborhood. They had designed the development to less commercial space as more

space would require additional parking spaces. He stated the project was designed to be pedestrian and bicycle friendly. They had a green design for the project and tried to include eco functional materials and designs for the project. The residential units were designed smaller to be more affordable and to allow for less parking requirements and the garages were designed as oversized single car garages to allow for storage as well so that residents were more likely to use them for parking. He stated they had designed the project with ample private and common open space areas with the common area to the rear of the project to afford for privacy to the residences which backed up to the rear of the lot. The front façade was pushed back from the street and designed to meet the commercial proponent of the project, as well as, to address concerns from the neighbors that the façade was too close to the street and had the rooflines and eaves to be lower than required.

**Chairperson Salwan** asked for questions from the Commissioners.

**Commissioner Pentaleri** complimented the design team for the genuinely creative and innovative design. He stated he had concerns about the adequacy of parking and that allowing 13 bicycle racks as credit for automobile parking was a concern, as well as, the adequacy for the total amount of commercial automobile parking. He asked what some of the traits that were involved were.

*Stuart Welte stated they had looked at the Ordinance and had used their experience in previous projects and stated he felt that parking was always an issue in every community. He stated they felt that adding additional parking spaces or parking lots never solved the issue. He stated they kept the units small to allow additional parking and that they had dealt with concerns that people using their covered parking for storage by increasing the size of the one car garages. He stated the Ordinance allowed alternative forms of transportation in lieu of automobile parking spaces by using a ratio and reiterated that the both portions of the project met the minimum parking requirements per the Ordinance. They had designed the project to have the bicycle racks and motorcycle parking spots in convenient locations so that they will be used. He stated the commercial portion of the project was relying on the idea that when the commercial tenant obtains their CUP it would be appointment oriented and therefore would not increase the traffic nearly as much as the City had predicted.*

**Commissioner Pentaleri** stated that what was proposed is consistent with Ordinances but he felt that it was not realistic.

*Stuart Welte stated that to change the ordinance or predicting what the business might be would be very analytical.*

**Commissioner Pentaleri** stated he could see the challenges in creating additional automobile parking but he was looking for other ways to afford for additional automobile parking. He stated he had a concern that any commercial use in this development would only have a requirement of 3.3 parking spaces per 1,000 square feet and in reality that orientation should have six parking spaces and they were only getting to that equivalent with bicycle racks.

*Stuart Welte stated they be open minded and open to alternatives.*

**Commissioner Pentaleri** asked if they could reduce the open space or extra wide garages or the number of bicycle or motorcycle spaces to allow for additional

automobile spaces as two motorcycles could park in one automobile space and one car could not park in a motorcycle space. He asked if it were possible to have the uncovered parking spaces unassigned so they could be shared between the residents and the commercial businesses being that the commercial use would be during off hours with the residential uses. He stated any of those might mitigate some of his concerns.

*Stuart Welte stated they had explored all of the options and were willing to explore car stackers in the open area. He indicated that they could reduce the size of the garages but that would take a bit more consideration as it might be an issue with the utilities and could possibly gain two additional parking spaces but that would reduce storage area. He indicated that they do not like to limit the open space and they had the open space at the rear due to the residences that backed up to the rear of the development. He stated a shared parking plan does work great with mixed-use projects and that hoping that once the HOA's CC&Rs are developed that can be a part of that.*

**Commissioner Pentaleri** commended the project and challenged the applicant to come up with a way to create more parking spaces.

**Commissioner Bonaccorsi** asked how many community meetings they had, how many people attended, and what feedback to they obtain.

*Stuart Welte stated they had one community meeting and noticed it according to City guidelines. He stated the meeting was not saturated and not everybody attended and it was held at the Senior Center. He stated they have handed out information and asked for comments from the neighbors. He stated the discussion was primarily about the perimeter wall and the materials that would be used and they did incorporate the feedback into the design.*

**Commissioner Bonaccorsi** asked if there were concerns about traffic, parking or density of the project.

*Stuart Welte stated there were no concerns about density but there were concerns about parking with the retail space.*

**Commissioner Bonaccorsi** asked if they felt compelled to have a commercial space to conform to the mixed-use designation.

*Stuart Welte stated they believed that mixed use was the only way to create sustainable neighborhoods.*

**Chairperson Salwan** asked what types of commercial uses would be by appointment.

*Stuart Welte stated appointment oriented boutique like businesses, such as, endodentistry, medical, dental, accounting and other online types of service so minimal parking would be used.*

**Chairperson Salwan** asked what ideas they had to address the parking concerns.

*Stuart Welte stated the ideas that were discussed were good options except the landscaping being removed from the rear. He indicated that they were open to a motor court and having it double as open space if the City was open to it and that they did look into parallel parking along the side of the drives but that the fire officials did not like the idea. He stated car stackers would work for residential*

*during off hours from the commercial spaces but are not good for commercial use unless utilized by the employees of the commercial businesses..*

**Chairperson Salwan** asked what a car stacker was.

*Stuart Welte stated a car stacker is a frame with a platform that you drive on and get out of the car and it raises the car up and then another car can park underneath it.*

**Vice Chairperson Leung** asked if they had explored utilizing more square footage for commercial space.

*Stuart Welte stated they had broken the project up into two components, as they wanted the portion at the front to feel smaller while still allowing cars to be parked at the rear of the development so they could not be visible from the street. They had originally designed the project to have the second story of the front building to be commercial use as well but the marketing that had been done showed a greater demand for residential space.*

**Vice Chairperson Leung** asked what marketing was done that showed residential was more in demand than commercial.

*Stuart Welte stated the owner is a developer and he talked to various real estate brokers.*

**Vice Chairperson Leung** stated there was no doubt about the design of the project and asked if they felt the project was inconsistent with the neighborhood.

*Stuart Welte stated that the neighborhood was diverse.*

**Chairperson Salwan** opened the public hearing.

**Mark Hankins**, resident, stated he had many concerns with the project the proposed design was a modern three story building that was surrounded by single story older homes. He stated the proposed balconies were within seven feet of the property line and looked directly into the adjacent properties. He stated he felt that the commercial proponent was more for restaurant or retail businesses and could generate 75-125 traffic light trips per a day. He also felt that they had underestimated the traffic use in the area and he did not fill that waiving a "real" traffic study with a mixed-use project was unacceptable. He stated he would like to see a traffic study done in conjunction with the project.

**Commissioner Bonaccorsi** asked him how long he had lived in his residence.

*Mark Hankins stated almost 30 years.*

**Commissioner Bonaccorsi** asked him if he was part of the process when it was rezoned in 1983.

*Mark Hankins stated no.*

**Commissioner Bonaccorsi** asked him if he had talked to neighbors at the time to learn what was happening.

*Mark Hankins stated he was told to go back to the Planning Department to see if they would rezone the area back to Residential in 1983 and he felt it was too much of a process.*

**Commissioner Dorsey** asked him about what traffic was like in the morning.

*Mark Hankins stated it takes him 10-15 minutes to get out of his driveway and that no one rides a bike to work or school.*

**Commissioner Pentaleri** asked if what he said was that there was 7 foot set backs on the balconies.

*Mark Hankins stated yes that the balconies protrude 7 feet from the property line.*

**Gary Hankins** stated that he deferred to the next speaker.

**Larry Hernandez**, resident, stated when he envisioned the proposed project he feels that it is overdevelopment and a better fit would be to scale the project back. He stated the rendering looks more like car dealership than anything else and that it does not fit in with the aesthetics of the area and he felt that the this type of planning leads to overcrowding. Regarding traffic he stated that he cannot leave his driveway some mornings due to the Centerville Junior High traffic.

**Commissioner Bonaccorsi** asked him if he attended the community meeting.

*Larry Hernandez stated yes.*

**Commissioner Bonaccorsi** asked him if he raised his concerns.

*Larry Hernandez stated yes.*

**Sy Najjar**, resident, stated he attended the community meeting and that they had told the applicant what they felt and what they were expressing at the Public Hearing. He stated he felt that the building does not fit in with the neighborhood and he asked the Commission to reconsider the project.

**Jack Rogers**, resident and previous City of Fremont Employee, raised his concerns with the density of the project and parking. He raised concerns about the process by which the rezoning had occurred and felt that it looked to be “back door rezoning”. He stated there was non-conforming residential that had been there for many years and the proposal to subdivide the property created a series of non-conforming residential lots and he asked the Commissioners how they would be able to do that. He raised concerns about the issuance of a CUP with no conditions and it would be very difficult to condition as you do not know what the use is going to be. He asked that the neighborhood be rezoned as residential.

**Commissioner Bonaccorsi** asked if he had reviewed what the City had envisioned in 1983 for the frontage when they had rezoned it.

**Jack Rogers** stated it was his understanding that two property owners had requested the rezoning to Commercial as that was what was the highest yielding at the time for investment properties. He felt that there was “spot zoning” on Fremont Boulevard from Centerville Junior High to Washington High School. He asked the Commissioners to take a look at that section and the zoning.

**Commissioner Bonaccorsi** stated he had reviewed the minutes from the meeting in 1983 to rezone the area to Commercial and it was two property owners who pushed

for the rezoning and that at the time it did seem to be commercial was appropriate and that the area was evolving but that dual use was not considered.

**Jack Rogers** stated yes to his understanding and indicated that a historic resource, the Centerville Hotel, was within one lot of the property.

**Chairperson Salwan** asked him what he wanted in regards to the process issues that he had raised.

**Jack Rogers** stated the problem was with density not the mixed-use or residential component. He stated they had reduced the private street so they could add additional square footage to the residential units and that the developer will be gone and the problems will remain. He encouraged the Commissioners to reject the plan and work with property owner for something more suitable.

**Alice Cavette**, resident, stated two of six required commercial parking spaces were substituted by bicycle or motorcycle parking but if the project was fully commercial it would be restricted to only 5% of the required parking. She stated that it was only 8 feet from the front doors of the three-story townhomes to the fence and the upper levels of the property will look over to the neighboring property. She felt it looked like they had done the minimum amount of commercial to allow for additional residential. She asked that the Commissioners remember the community character element of the General Plan when making their decision.

**Joel Schmidt**, resident, stated he had concerns with the density particularly the allowable FAR; the project was calculated at 0.9 and the maximum FAR for C-O zoning is 0.6. He felt that the FAR was calculated incorrectly as it was calculated using the entire lot which included the private street and his understanding is should be calculated using the gross floor area to the net lot area, his understanding was that the private street could not be used in the calculation. He felt that because the FAR was calculated incorrectly therefor it leads to an increase in density and parking issues.

**Chairperson Salwan** invited the applicant back to the podium.

**Stuart Welte** stated while the driveway was initially narrowed it was re-widened. He stated the FAR was calculated correctly as it is based on the gross square footage of the lot and the private street is a private drive. He stated that in their experience with mixed-use properties there was more vitality and longevity to the projects that were a higher ratio of residential to commercial. He apologized to the neighbors that felt that they had not communicated with them as they had tried to meet with everyone that had requested it. He felt strongly that the project would be a well-received design and that it would work well within the community.

**Chairperson Salwan** asked how the project came about as mixed use.

*Stuart Welte stated through the communications with City staff he felt it was a mutual gravitation that worked within the General Plan and what was appropriate for the area.*

**Planning Manager Wheeler** stated that C-O zoning allows residential with a CUP and does require it to be within a mixed use development.

**Chairperson Salwan** closed the public hearing.

**Chairperson Salwan** asked how the FAR was calculated.

*Planner II Willis stated the FAR was calculated at 0.59 including the private street the maximum is 0.60. The private street was included in calculating the FAR as private streets are not excluded.*

**Chairperson Salwan** asked how privacy was addressed in project.

**Assistant Planning Manager Morris** stated privacy guidelines were addressed. In regards to parking he stated that all but one of the residential units was two bedrooms which played a factor in allowing the substitutions for parking spaces and that the parking did meet code. He stated the City had allowed substitutions with bicycle and motorcycle parking in other commercial projects but not with mixed-use developments.

**Senior Deputy City Attorney Rasiah** asked the commissioners to keep in mind that this was a Map Act Application and once an application is deemed complete no new parking requirements standards could be imposed.

**Chairperson Salwan** asked **Planner II Willis** to comment on traffic and the impacts the project could have.

*Planner II Willis stated city transportation engineers estimated traffic generation using a convenience store as an example of the amount of traffic the commercial component would generate and used the standards for residential and the traffic levels were below the level which would require a traffic study. The threshold would have been 100 peak hour trips in this projects case it was calculated at about half that.*

**Commissioner Bonaccorsi** asked if in 1983 whether a commercial office space would have allowed mixed-use or if it is a new variant that was allowed.

*Assistant Planning Manager Morris stated he did not think it was part of a mixed-use project in 1983.*

**Planning Manager Wheeler** stated the residential component was added in the most recent commercial use zoning update.

**Commissioner Bonaccorsi** clarified that in 1983 when the area was rezoned as C-O there would not have been an application that would have come through as mixed-use.

*Assistant Planning Manager Morris stated correct.*

**Commissioner Pentaleri** asked about the setbacks with the balconies and if the setbacks were measured from the wall.

*Planner II Willis stated correct.*

**Commissioner Pentaleri** stated this was one of the most difficult decisions he has had to make. He stated when he looked at the project without consideration to the neighborhood it was an excellent project. He felt that the project did not fit in with the community character and he had heard what Jack Rogers said about spot zoning

down Fremont Boulevard and thinks that there might be some resonance to it. He does think that that stretch of Fremont Boulevard should be zoned commercial, however, he did not want the City to turn its back on the historic resources located there either. He stated that because they cannot condition something to cure the parking issue he could not support the project.

**Vice Chairperson Leung** asked about zoning on Fremont Boulevard and the designation on the General Plan and asked what the designation along that portion of Fremont Boulevard was.

*Planning Manager Wheeler stated the zoning is Commercial-Office along that frontage and there were conforming and nonconforming uses along that portion of Fremont Boulevard.*

**Vice Chairperson Leung** asked what the long term plan for Fremont Boulevard was (Envisioning Fremont Boulevard).

**Planner II Willis** stated that the Envision Fremont Boulevard document did not include that portion of Fremont Boulevard.

**Vice Chairperson Leung** stated she agreed that the parcel is good for mixed-use because it was elongated and the second half would not be useable for commercial. She stated she felt that the ratio of commercial to residential is out of proportion and the commercial component of the project was underutilized. She felt that the developer had just met the minimum requirement so they could build residential. She addressed the comment about Fremont Boulevard stating that over time there might be a lot of changes and it might become mixed with commercial and residential. She felt that if there was a more balanced approach and it kept a certain ambiance of the neighborhood it could set a good example for future development. She stated she would not support the project.

**Senior Deputy City Attorney Rasiah** reiterated that the project did meet the code requirements for the parking, there were other components of the project which were discretionary such as the CUP, the use of the site, design issues which were within the purview of the Commissioners.

**Commissioner Karipineni** stated she did understand that the parking does meeting the zoning ordinance, but she felt that perhaps the method which was used was not best suited for the project and due to this reason she would not be voting in support of staff recommendations. She stated she felt that the while there is a natural turn over there is also consideration to protect the historical resources in the area. She stated that she worried about the density and parking issues within the project.

**Commissioner Bonaccorsi** stated he did like the Eco functionality of the project and understood that neighborhoods do go through transitions. He looked at how mixed-use came about for the project, it started with two developers who wanted to do commercial at the location and only in the past ten years was mixed-use allowed in commercially zoned areas. He stated he would like to see a study area to see if the C-O was appropriate and have standards in place for the entire frontage on Fremont

Boulevard rather than see it economically driven project by project and end up with a design that was out of context with the surrounding area. He referred to the applicant who stated people want the amenities right there but he felt that the project was too disjointed. He stated he had looked at the discretionary elements of context, architecture, the fit within the community and he felt that the project did not succeed as commercial or residential and therefor was not in support of the project.

**Commissioner Dorsey** stated she was in agreement with the other Commissioners as the project was out of character with the area and she felt that mixed-use findings of whether the project fit into area or infringed onto the neighbors and she felt that it did not fit in well with the community and that it would infringe upon the neighbors and therefore did not support the project.

**Senior Deputy City Attorney Rasiah** asked that the Commissioner explain the findings for denial of the projects and to indicate why they were unable to support the findings that were given.

**Chairperson Salwan** stated that seeing the poll of the commissioners some elements were liked and he would like to see if the applicant and staff were able to bring the project back after addressing some of the issues.

**Vice Chairperson Leung** stated that mixed-use was the perfect way to utilize the parcel but wants to see the proportion more balanced between commercial and residential.

**Chairperson Salwan** asked her if she would be open to the applicant working with staff to address some of the issues.

**Vice Chairperson Leung** stated yes.

**Commissioner Karipineni** stated she would be open to seeing the project come back and would like to see the project more conforming to the surrounding neighborhood.

**Commissioner Bonaccorsi** stated that the applicant and staff could work together to bring another project back before the commission but he was not open to delaying the project any further.

**Planning Manager Wheeler** stated the action would be final unless appealed by the applicant.

**Commissioner Dorsey** stated she agreed with **Commissioner Bonaccorsi** and would like to move forward.

**Commissioner Pentaleri** stated he would not support the project due to Condition One which stated “the development’s site layout, building(s), and land uses integrate into the existing community...” he stated he did not agree with the finding in the staff report. He stated he was not in support of delaying the project any further.

*Chairperson Salwan stated that they have allowed applicants to work with staff to bring a project back before the Commission.*

**Commissioner Pentaleri** asked if he was stating to approve with conditions.

*Chairperson Salwan stated no, but to send back to staff to work with the applicant and neighborhood as everyone saw something special within the project.*

**Commissioner Pentaleri** stated to him the applicant had heard the deliberation and thoughts on the project and they could go back and be responsive and work with staff on another project.

*Chairperson Salwan stated they were already in the process and to delay rather than deny would allow the process to move along quicker.*

**Commissioner Pentaleri** moved to deny the project on the basis that the development does not integrate into the community.

*Chairperson Salwan asked Senior Deputy City Attorney Rasiah if that was sufficient.*

**Senior Deputy City Attorney Rasiah** stated that they should give other basis for their decision.

**Commissioner Pentaleri** stated he was open to a friendly amendment.

**Commissioner Dorsey** seconded adding with Condition Two “the development’s site layout, building(s), and land uses integrate into the existing community...”

**Senior Deputy City Attorney Rasiah** asked that they provide a basis for denial of the Conditional Use Permit.

**Commissioner Bonaccorsi** offered a friendly amendment indicating Condition Three “design, location, size, and operation characteristics of the proposed use are compatible with development...”

**Chairperson Salwan** stated he would not be voting in support of the motion.

*Commissioner Karipineni stated she agreed with Chairperson Salwan and would like to see the applicant work with staff and come back to Planning Commission with a revised project.*

**Commissioner Bonaccorsi** responded that the assumption is that if the project is denied the applicant can go back and work with staff instead of being in limbo.

**Chairperson Salwan** stated he stood with the process to have it brought back and not denied.

IT WAS MOVED (PENTALERI/DORSEY) AND CARRIED BY THE FOLLOWING VOTE (4-2-0-1-0) THE PLANNING COMMISSION – DENIED BASED ON FINDINGS.

The motion carried by the following vote:

AYES: 4 – Bonaccorsi, Dorsey, Leung, Pentaleri

NOES: 2 – Salwan and Karipineni  
ABSTAIN: 0  
ABSENT: 1 – Reed  
RECUSE: 0

- Item 4. **SUMMERHILL PALM AVENUE SUBDIVISION - PLN2016-00170** - to consider a Discretionary Design Review Permit, Vesting Tentative Tract Map No. 8314, and a Preliminary Grading Plan to allow the construction of 31 detached single-family homes on seven acres located approximately 750 feet east of Palm Avenue and north of Interstate I-680 in the Mission San Jose Community Plan Area, and to consider a finding that no further environmental review is required pursuant to the California Environmental Quality Act (CEQA) as a Mitigated Negative Declaration (MND) (SCH#2014052031) was previously adopted and none of the conditions requiring a subsequent or supplemental environmental document stated in section 15162 of the CEQA guidelines are present.

**Commissioner Bonaccorsi** stated he did not need a presentation but would like to hear from the applicant.

**Chairperson Salwan** invited the applicant to the podium.

**Marshall Torre**, applicant, stated they had worked with staff on a complicated Planned Development and that they agree with the staff report and Conditions of Approval.

**Commissioner Pentaleri** asked the applicant about the staff report discussion regarding exterior noise levels and that a sound wall along I-680 could have reduced exterior noise to acceptable levels but was not required as a mitigation measure because it was within Caltrans right away. Expressed concern that this was a formerly City owned property that was surplus and questions why a sound wall was not required. Stated concerns about disclosure noise impact

*Planning Manager Wheeler stated it sounded like concern was that the property was City owned and the City Council made a finding to allow exterior noise levels at the conditionally acceptable levels, and the adjacent Mission Creek subdivision had the same finding. It is not uncommon for an environmental document to identify mitigation measures that require Caltrans approval. The City often does not require offsite mitigation measures where Caltrans approval is required.*

**Commissioner Pentaleri** stated his concern that some of the projects in the Centerville area had a great deal of concern about noise mitigation. Further noted that a lot of time has lapsed between approval of the Planned District and the Tentative Tract Map and it may have been possible to obtain Caltrans approval to construct a wall, which would have better protected future residents. He asked the applicant about the mitigation for air particulates and the mitigation for that risk is to install filters and questions whether the requirement requires homeowner maintenance.

**Marshall Torre** stated yes it does require maintenance. The conditions and CC&Rs and require that they will be notified that the filters need to be changed.

**Commissioner Pentaleri** asked what mechanism is for homeowners to be notified when filters need to be changed.

**Marshall Torre** stated the standards would be provided to the homeowner but does not know if there would be a red light.

**Commissioner Pentaleri** stated the he hoped that the disclosure would be very prominent for the resident and asked if maintenance of the filters can be an HOA requirement/duty.

**Marshall Torre** stated the filters are in the house, which is a private area.

**Chairperson Salwan** opened the public hearing

**Alice Cavette**, resident, stated she hoped that the commissioners had driven around the area and expressed concern about the massing of the homes.

**Marshall Torre** stated they had worked with staff to meet the requirements.

**Chairperson Salwan** closed the public hearing.

**Commissioner Bonaccorsi** commented that he was displeased that the courtesy notice was facing Mission Creek instead of Palm Avenue.

**Assistant Planning Manager Morris** stated the applicant installed it.

**Commissioner Bonaccorsi** asked what the discretion of approval with a different form of CC&R regarding air filter maintenance.

**Senior Deputy City Attorney Rasiah** referred the Commissioners to condition C-1-d which required ongoing maintenance plan w/ provision that requires cleaning, leaks, etc. and the fees associated with filter are included to replace/maintain filters.

**Commissioner Bonaccorsi** asked if the HOA responsible for maintenance.

**Senior Deputy City Attorney Rasiah** fees paid portion set aside for maintenance.

**Commissioner Bonaccorsi** asked if HOA is responsible if there is a change of ownership of the home.

**Senior Deputy City Attorney Rasiah** stated that BRE is responsible HOA budgets, having an accounting mechanism given that the fee is set aside, so no issue with something fashioned as it is conditioned in there, staff can work with applicant

**Commissioner Karipineni** asked if the owner will pay HOA yearly and who would maintain the filters.

**Senior Deputy City Attorney Rasiah** stated the HOA typically maintains common areas within the development not the interior of the homes, recommends not having the HOA be responsible for the maintenance.

**Commissioner Pentaleri** stated his reading of the maintenance plan is that the HOA could notify a homeowner of the need to perform periodic maintenance and provide a filter to ensure the systems are maintained.

IT WAS MOVED (PENTALERI/BONACCORIS) AND CARRIED BY THE FOLLOWING VOTE (6-0-0-1-0) THE PLANNING COMMISSION – FOUND THAT THE PREVIOUSLY ADOPTED MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING AND REPORTING PLAN AS SHOWN IN EXHIBIT “A” (SCH#2014052031), ARE SUFFICIENT FOR THE PROPOSED PROJECT, AND THAT NONE OF THE CONDITIONS REQUIRING A NEW SUBSEQUENT OR A SUPPLEMENTAL ENVIRONMENTAL DOCUMENT STATED IN SECTION 15162 OF THE CEQA GUIDELINES ARE PRESENT AND, THEREFORE, NO FURTHER ENVIRONMENTAL REVIEW IS NECESSARY;

AND

FOUND THAT THE PROJECT IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS, OBJECTIVES AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE, HOUSING ELEMENT, CONSERVATION, COMMUNITY CHARACTER AND SAFETY ELEMENTS AS ENUMERATED WITHIN THE REPORT,

AND

APPROVED DISCRETIONARY DESIGN REVIEW PERMIT PLN2016-00170, AS SHOWN ON EXHIBIT “B,” BASED ON THE FINDINGS AND SUBJECT TO THE CONDITIONS OF APPROVAL SET FORTH IN EXHIBIT “D;”

AND

APPROVED VESTING TENTATIVE TRACT MAP NO. 8314 AND A PRELIMINARY GRADING PLAN AS SHOWN IN EXHIBIT “C,” BASED ON THE FINDINGS AND SUBJECT TO THE CONDITIONS OF APPROVAL SET FORTH IN EXHIBIT “D;”

AND

APPROVED THE PROPOSED REMOVAL AND MITIGATION FOR 12 PROTECTED TREES PURSUANT TO THE CITY’S TREE PRESERVATION ORDINANCE, BASED UPON FINDINGS AND CONDITIONS IN EXHIBIT “D.”

The motion carried by the following vote:

AYES: 6 – Salwan, Bonaccorsi, Dorsey, Karipineni, Leung, Pentaleri  
NOES: 0  
ABSTAIN: 0  
ABSENT: 1 – Reed  
RECUSE: 0

## **DISCUSSION ITEMS**

## **MISCELLANEOUS ITEMS**

Information from Commission and Staff:

1. Information from staff: Staff will report on matters of interest.

- **Assistant Planning Manager Morris** stated the next regular meeting of the Planning Commission was scheduled for May 12, 2016.
- **Planning Manager Wheeler** stated the City Wide Design Guidelines, Mission Palms Designated Neighborhood, Vista Grande, Centerville Junction and the Stevenson Place MidPen projects were on the agenda.

2. Report on actions of City Council Regular Meeting

- **Planning Manager Wheeler** stated the City Council approved the Density Bonus Ordinance and the second reading of the Ordinance would be on May 3, 2016.

3. Information from Commission: Commission members may report on matters of interest.

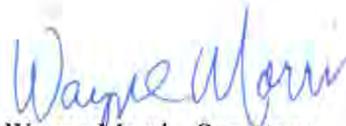
- **Commissioner Pentaleri** mentioned the Robson Homes Stevenson Place project and the concern that was raised in regards to fire and the bollards and wondered why the Summerhill project was allowed to be gated and no issue had been raised.
- **Associate Planner Wage** stated that the Summerhill project had worked with Fire on the design for the fence.
- **Commissioner Pentaleri** stated that his point was that they had required a lockbox.
- **Assistant Planning Manager Morris** stated the difference between that project and the Robson Homes and MidPen projects was that staff had worked very hard with the two applicants to have cohesive projects and now Robson Homes is going to have a gate.

Meeting adjourned at 10:35pm

SUBMITTED and APPROVED BY:



Courtney Fox, Recording Clerk  
Planning Commission



Wayne Morris, Secretary  
Planning Commission