

**Planning Commission  
Staff Report**

August 25, 2010  
Item 5.a.

**SUBJECT:** PCUP-273

**APPLICANT:** Diamond Pleasanton Enterprise

**PROPERTY OWNER:** FFHA Associates

**PURPOSE:** To modify the approved conditional use permit (UP-90-43) for the operation of Status (formerly Aura Nightclub) to allow an outdoor seating/standing area and to increase the maximum occupancy at the facility.

**GENERAL PLAN:** Business Park (Industrial / Commercial and Office) and Mixed Use

**ZONING:** PUD-I/C-O (Planned Unit Development-Industrial/Commercial – Office) District

**LOCATION:** 4825 Hopyard Road

**ATTACHMENTS:** Exhibit A, Draft Conditions of Approval  
Exhibit B, Site Plan/Seating Plan and Narrative  
Exhibit C, Outdoor Seating Plan, Table, Chairs, and Barrier Specifications  
Exhibit D, Hacienda Business Park Letter of Approval  
Exhibit E, Conditions of Approval for UP-90-43  
Exhibit F, Security and Training Plan  
Exhibit G, Sample Food Menu  
Exhibit H, Location Map  
Exhibit I, Noticing Map

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**BACKGROUND**

The 88,589-square-foot Gateway Square Shopping Center was approved by City Council in 1986 (case PUD-81-30-35D). In 1990, the Planning Commission approved a conditional use permit for Sh Boom (case UP-90-43), a 1950's theme dance club with alcohol service, to be operated out of a 10,746-square-foot tenant space. The approved

hours of operation were from 5:00pm to 2:00am, seven days a week with limited food service.

In 2004, the business underwent cosmetic changes to update its look and the name of the business was changed to Aura. While cosmetic changes were made to the facility, it continued to operate as a dance club/bar and no changes were made to the existing use permit. Once granted, Conditional Use Permits run with the land and remain valid during change of ownerships.

Diamond Pleasanton Enterprise, the applicant, is acquiring the existing dance club (Aura, to be renamed to Status) and is proposing to make minor interior modifications that increase the maximum occupancy, add an outdoor patio area with a barrier (case PDR-912, which will be reviewed by staff), and modify condition number 2 of UP-90-43 to allow the side doors to be used for access to the outdoor patio area during business operations. Accordingly, the applicant has applied for a Conditional Use Permit to modify the existing approval to allow the proposed expansions. Conditional Use Permits and modifications of existing Conditional Use Permits require review and action by the Planning Commission and, therefore, this application is before the Planning Commission for its consideration.

### SITE DESCRIPTION

The subject property is a 9.7-acre parcel, known as Gateway Square, located at the northeast corner of Hopyard Road and Stoneridge Drive in Hacienda Business Park (HBP). The one-story structure is one of five (5) on-site with a large parking lot (432 spaces) that serves the existing buildings. This is a multi-tenant building with approximately 10,746 square feet of area designated for the existing establishment.

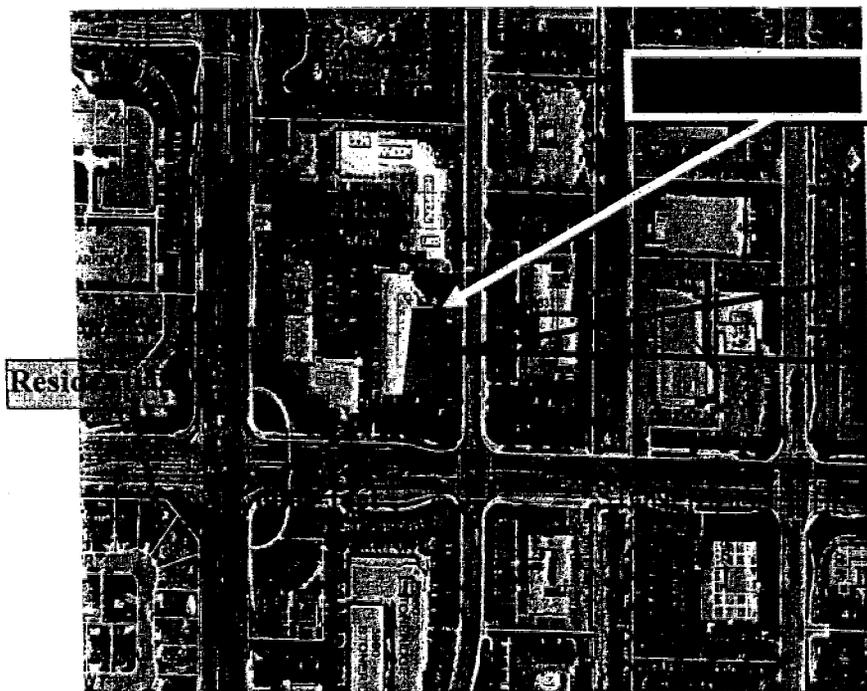


Figure 1.1 – Vicinity Map

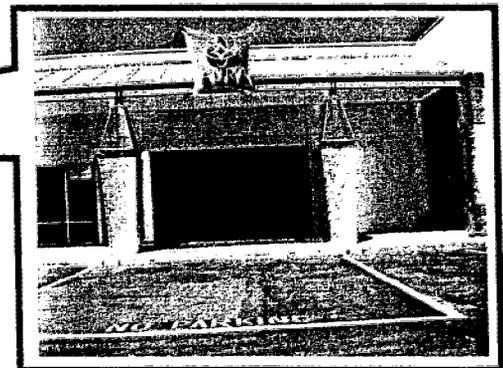


Figure 2.1 – Entry Doors

The subject site contains tenants such as: AppleOne, Callahan Tile & Stone, Chili's, City Dry Clean, Diamond Pleasanton Enterprises, Eddie Papa's, Fast Frame, Gateway Beauty Salon, Gateway Dental Care, Golden Apple Learning Store, Hacienda Park Optometry, Hertz, Huntington Learning Center, Kelly-Moore Paints, Kinder's, La Petite Fleur, Mills, NCAL Computer Source, Professional Nails, Randstad, Round Table Pizza, Tanning Island, The Cheese Steak Shop, The UPS Store, and Ume Sushi. The other uses in the general area are office and hotels. The nearest residential properties are located to the southwest, across Hopyard Road, approximately 600 feet away (Figure 1.1).

Access to the site is provided by four (4) driveway entrances (one (1) off of Hopyard Road, one (1) off of Stoneridge Drive, and two (2) off of Chabot Drive). The existing establishment has direct parking lot access. The front entry of the existing establishment faces Chabot Drive (Figure 2.1).

### PROJECT DESCRIPTION

The applicant proposes to modify the interior floor plan to accommodate 812 occupants (which is a modification of the approval for UP-90-43 that allowed 643 patrons), establish an outdoor patio area with a barrier (PDR-912) that will accommodate up to 80 people standing (as determined by an architectural calculation) or 12 people seated (Figure 3.1, 4.1, 4.2, and Exhibit C), and to utilize the doors on the southeast portion of the building for

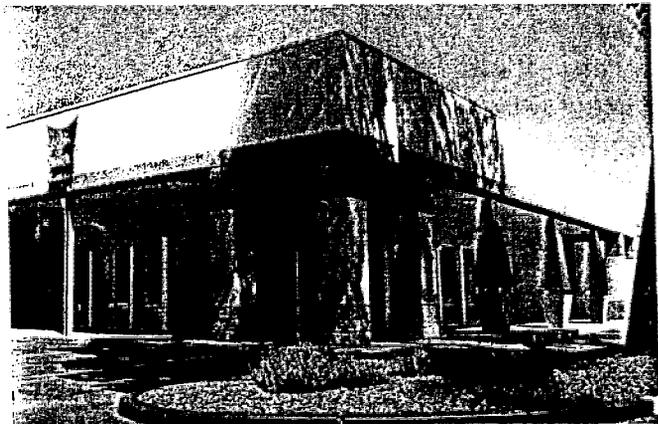


Figure 3.1

access to the outdoor patio (which is a modification of condition number 2 of UP-90-43). The outdoor patio area would be utilized for patrons to consume beverages and/or food if they desired. The outdoor furniture would be removed nightly at 10pm to allow for standing room only.

The proposed outdoor patio area with barrier will be required to meet the requirements of the Americans with Disabilities Act (ADA), including a four-foot unobstructed sidewalk clearance around the barrier and Alcohol Beverage Control (ABC) requirements for beverage service in this area. The barrier is subject to staff-level design review approval and will require a building permit from the Building and Safety Division. The Planning Commission will be notified of staff's action on the barrier on a future Zoning Administrator Action Report.

The following illustrations show the approximate location of the barrier to be installed (Figure 4.1 and 4.2) and a detail of the barrier design and furniture specifications are attached for additional reference (Exhibit C). The barrier will be painted to match the metal elements (brown) on the building and the applicant has stated that two (2) security personnel will be employed to monitor the outdoor seating area.

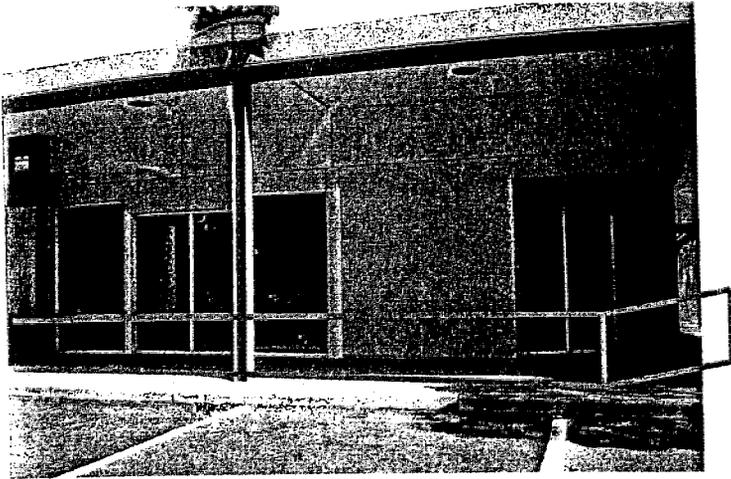


Figure 4.1

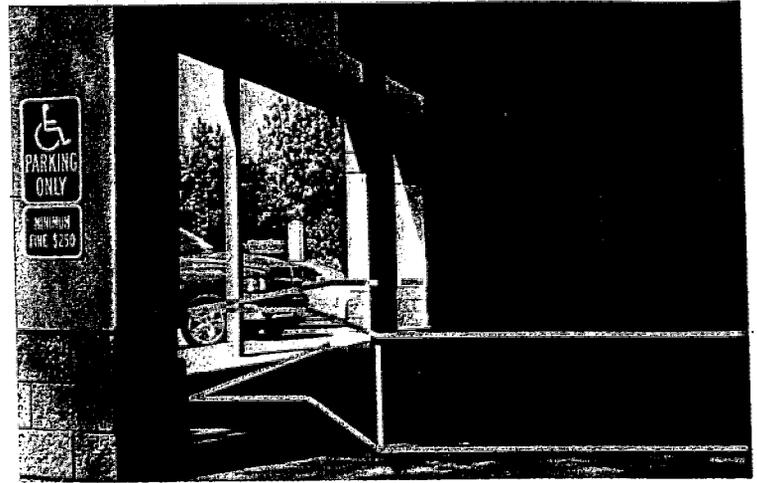


Figure 4.2

All other criteria of the existing Conditional Use permit would be complied with. Please refer to the applicant's written narrative and floor plan for a detailed description of the facility and its layout (Exhibit B).

## ANALYSIS

Conditional uses are uses that, by their nature, require individual review to ensure that impacts associated with their use will be minimal. Conditional Use Permits may be subject to appropriate conditions to ensure that any potential adverse impacts associated with the use will be mitigated. Additionally, the conditions of approval for this application have been composed to address possible conflicts with surrounding land uses. These conditions aim to balance the request of the applicant with the public health, safety, and welfare of the neighboring area.

The discussion below provides an analysis of the proposed modifications of the existing Conditional Use permit.

### Land Use

The existing use is located in a PUD (Planned Unit Development) that allows this type of use subject to a Conditional Use Permit. The existing dance club has been in operation since 1990. According to the Police Department, this establishment has generated calls for service commensurate with the combination of large numbers of people, alcohol service, and late hours. When the existing Conditional Use Permit (UP-90-43) was granted in October of 1990 there were only a limited number of conditions placed on the project and only a few of those conditions dealt with issues of safety and

security. With this Conditional Use Permit application, the Planning Division and Police Department have taken the opportunity to fine tune and add recommended conditioning to ensure that peace and order are achieved at this location. Therefore, staff has recommended conditions of approval that address employee training, security, music selection, and beverage pricing. Additionally, the new owner has stated that they will operate the establishment in a responsible manner.

One of the primary questions in reviewing a modification to a Conditional Use Permit application is what effect the proposed changes will have on the surrounding uses. The surrounding uses include office, retail, and restaurant uses. There are unlikely to be any conflicts with the surrounding retail uses because the hours of operation do not overlap with the proposed use. Additionally, the existing dance club and restaurants have operated as complimentary uses with many patrons opting to enjoy their dinner at the neighboring restaurants before entering the dance club for the evening. Therefore, staff believes that the existing use with the proposed modifications will not create any adverse impacts on the surrounding uses. Furthermore, the subject site does not immediately abut residential property, reducing potential noise impacts on the residences. Therefore, from a land use perspective, staff finds the proposed modifications to the existing use to be acceptable, as conditioned.

#### Occupancy

The UP-90-43 staff report noted that the "facility would accommodate a maximum total of 643 people." The applicant stated that the existing layout accommodates approximately 742 people and staff has confirmed this information by reviewing improvement plans that were approved by the Building and Safety Division. With the modifications to the interior seating, the establishment would be able to accommodate 812 occupants (patrons and employees) and the outdoor patio area would accommodate 80 patrons standing or 12 patrons sitting. Though the outdoor patio area accommodates additional patrons, these patrons are already accounted for at the entry of the facility and, therefore, are not considered in the total calculation of the maximum allowed occupancy.

The applicant has indicated that the occupancy of the establishment will be monitored closely. The counting method is based on a system of providing numbered tickets at the time of entry with exiting patrons being counted by a manually operated "clicker." The applicant has stated that the occupancy of the facility at any given time can be obtained within a matter of a few minutes.

Staff believes that, as conditioned, the proposed modification will not produced any conflicts with the surrounding uses.

#### Noise

The proposed modifications to the existing Conditional Use permit must be in accord with the objectives of the Zoning Ordinance. One of those objectives is to "promote the

stability of existing land uses that conform with the General Plan and to protect them from inharmonious influences and harmful intrusions." As proposed, staff believes that noise from the dance club would be minimal and would not negatively impact uses located adjacent to the subject site.

The Police Department has indicated that the music selection is one of the main factors in the amount of noise (and public disturbance) complaints that are typically received for this type of establishment. The current music selection is Top 40 mainstream mix. The applicant has stated that they will continue the current music genre and will not be playing Hip Hop as a main music selection.

Furthermore, the entry doors and the doors to the outdoor patio area will be the only access points to the building during business hours. The existing doors already operate with self-closing mechanisms. The other doors will remain closed during business hours and are for emergency exit use only, further limiting potential noise impacts to surrounding tenants and properties. There will not be any music provided in the outdoor patio area. The use will be required to comply with the City's noise regulations that are designed to protect the peace, health, safety, and welfare of the citizens. Additionally, staff has recommended conditions of approval that will require the applicant to be responsible to ensure that patrons are orderly and quiet in the patio area and when arriving/departing the building and parking areas. Therefore, staff does not expect the proposed modifications would be disruptive to adjacent properties.

### Parking

There are a total of 432 on-site parking spaces in Gateway Square Shopping Center. The overall parking ratio for the center is 1 parking space for every 205 square feet of floor area. Applying this parking ratio to the applicant's 10,746-square-foot tenant space, 53 parking spaces would theoretically be allocated to the tenant space. However, there are no assigned parking spaces in this development.

The Municipal Code does not have a parking standard that precisely calculates the parking demand for this use which contains a relatively low number of seats (66) and a high occupancy (812). The Municipal Code parking standards for bars requires one parking space per 200 square feet of gross floor area or one space for every three seats, whichever is greater. Based on this standard, 54 spaces would be required using the size of the tenant space (only 22 spaces would be required based on the number of seats). The Municipal Code parking standard for dance halls is calculated at a one parking space per 50 square feet of floor area used for dancing. The proposed use would only require 35 spaces based on the 1,823 square feet of dance floor in the establishment. In addition, the Hacienda Design Guidelines require one parking space per 200 square feet of gross floor area for commercial/retail uses, which is what was used to determine the parking requirements when this shopping center was built.

With a maximum occupancy of 812 occupants, staff believes that the parking demand for the use would be much higher than the Municipal Code and Hacienda parking

requirements calculated above. However, staff believes that parking demand would be alleviated by many factors, including patrons carpooling to the facility. While it is difficult to determine the exact parking demand created by the facility, staff believes the maximum parking demand would be around 270-400 spaces, depending on the number of people carpooling to the site (approximately 270 parking spaces would be used if there were three persons per vehicle and approximately 400 spaces would be used if there were two persons per vehicle). Staff notes that these are maximum parking demand estimates and that the maximum number of patrons is unlikely to be present on a consistent basis and would most likely be limited to weekends.

Due to the shortfall in allotted parking spaces compared to the estimated peak demand for this use, staff considered other factors, such as the parking demands of the other uses, the hours of operation, and multiple designation vehicle trip.

The dance club would experience peak parking demands at 10:00pm. Since the majority of the other uses in the complex are closed by 6:00pm, staff does not believe that there will be any parking conflicts with the adjacent tenants. The parking lot provides ample parking to serve the dance club and the existing restaurants that are open until 10:00pm. It is also conceivable that a single vehicle could be used to transport patrons to the restaurant for dinner and then those same patrons could then go to the dance club for their evening entertainment (i.e. one parking space would be serving two uses).

Additionally, staff has talked to James Paxson, General Manager of Hacienda Owners Association, regarding the parking situation for the current dance club and he has indicated that there have been no parking conflicts with the existing establishment and he does not foresee any conflicts with the business expansion. Staff is recommending a condition of approval requiring the applicant to encourage club staff to utilize the areas of the parking lot that are less used by the patrons. This would allow patrons to park as close the dance club as possible, thereby reducing the potential for parking conflicts with patrons of the restaurants.

Therefore, based on the parking demands of the other uses, the hours of operation, and the historic parking situation, staff believes that the parking availability is sufficient to accommodate the proposed use and the surrounding uses in the complex. However, should parking-related problems occur, staff has included a condition of approval which allows the Director of Community Development to refer the use permit back to the Planning Commission for possible mitigation measures.

#### Outdoor Patio Area

The outdoor patio area has been reviewed by the Building and Safety Division and the Police Department. Both reviewing parties are working with the applicant to ensure that all applicable codes will be met. The area enables the operator to offer a controlled area for the patrons to get fresh air or to talk without exiting the facility and loitering in the parking lot area. Given the proximity to the doors, no smoking would be allowed in

the patio area per the City's Smoking Ordinance; the applicant has been made aware of this restriction.

## **PUBLIC NOTICE**

Notices regarding the proposed application and related public hearing were mailed to property owners and tenants within 1,000 feet of the subject property. As of the publication of this staff report, staff has not received comments pertaining to this application. Staff has provided the noticing map as Exhibit I for the Commissions reference.

## **HACIENDA OWNERS ASSOCIATION**

James Paxson, General Manager of Hacienda Owners Association, has reviewed the application for the proposed use and found that it is in substantial compliance with Hacienda's guidelines set forth in the CC&Rs (Exhibit D). James Paxson has stated to staff that based on the space allocation and business practice, the association believes that the use, parking, and traffic are compatible with the current approved uses within the subject area and, thereby, approved the proposed use.

## **FINDINGS**

The Planning Commission must make the following findings prior to granting the use permit:

- A. That the proposed location of the conditional use is in accordance with the objectives of the zoning ordinances and the purpose of the district in which the site is located.**

The zoning ordinance endeavors to foster a harmonious, convenient, and workable relationship among land uses, while protecting land uses from inharmonious influences and harmful intrusions; and insuring that public and private lands ultimately are used for the purposes which are most appropriate and beneficial to the City as a whole. As conditioned, staff believes the proposed modifications to the existing establishment would be consistent with these objectives. The dance club establishment has been a compatible use with the surrounding businesses and staff believes that the expansion to the subject site would also be consistent with the existing business operations.

The site of the subject use is located within the Hacienda Business Parks' CPD (Retail/Commercial/Financial Planned District), which permits the uses of the City's C-C (Central Commercial) and C-F (Freeway Commercial) districts. Bars, including entertainment and dancing, are conditionally permitted uses in the C-C and C-F districts and are in accordance with the purposes of the zoning district to provide locations to offer commodities and services to the residents of Pleasanton and surrounding areas. The proposed conditions of approval for the project give the City appropriate controls to ensure that the use does not have any negative impacts on surrounding businesses and properties. The

modification to the use permit is, therefore, in accordance with the objectives of the zoning district in which the site is located, and staff believes this finding can be made.

- B. That the proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare, or materially injurious to the properties or improvements in the vicinity.**

As conditioned, staff finds that the proposal will not have a detrimental impact to the public health, safety, or welfare, or be materially injurious to the properties or improvements in the vicinity. In particular, conditions require adherence to hours of operation and parking to mitigate for possible impacts to adjacent uses. The new business owner has assured staff that they will work proactively to ensure that all patrons behave in an orderly manner. Staff also believes the outdoor patio area will enable the establishment to control noise, loitering, or other nuisances that would otherwise occur within the parking lot. Further, if a conflict arises with the operation of the business, a condition of approval allows the Director of Community Development to determine if the proposal needs to return to the Planning Commission for further consideration or additional mitigation measures. The existing dance club establishment has provided a social benefit to the community. Therefore, staff believes that this finding can be made.

- C. That the proposed conditional use will comply with each of the applicable provisions of the Municipal Code which apply to Conditional Uses.**

The Pleasanton Municipal Code states that because of the unusual or uncharacteristic nature of some proposed land uses, conditional uses require special consideration so that they may be located properly with respect to their effects on surrounding properties. The proposed use has conditions of approval to ensure that the applicable provisions of the Pleasanton Municipal Code are met and that adjacent businesses and residences will not be adversely impacted. Therefore, staff believes that this finding can be made.

## **ENVIRONMENTAL ASSESSMENT**

This project is categorically exempt from environmental review pursuant to California Environmental Quality Act Guidelines, Section 15301, Existing Facilities, Class 1 which allows the operation of a uses, permitted or conditionally permitted, within an existing building. Therefore, no environmental document accompanies this report.

## **CONCLUSION**

Based on the analysis of this staff report, staff believes that the required findings for the proposal can be met. Additionally, staff believes that the proposed use, as conditioned, will be compatible with the surrounding uses. The recommended conditions of approval have been carefully considered and constructed to address potential conflicts with

adjacent land uses and to maintain the safety and general welfare of the surrounding area.

### **STAFF RECOMMENDATION**

Staff recommends that the Planning Commission approve PCUP-273 by taking the following actions:

1. Make the required conditional use findings as described in the staff report; and
2. Approve PCUP-273 subject to the conditions listed in Exhibit A.

Staff Planner: Rosalind Rondash, Assistant Planner, (925) 931-5613, [rrondash@ci.pleasanton.ca.us](mailto:rrondash@ci.pleasanton.ca.us)

**Exhibit A**  
**DRAFT Conditions of Approval**  
**PCUP-273, 4825 Hopyard Road**  
**Diamond Pleasanton Enterprise**  
**August 25, 2010**

**I. Project Specific Conditions:**

**Planning Division**

1. The proposed business activities and operation shall conform substantially as described in plans, narrative, and other materials (Exhibits B, C, F and G), dated "Received June 28, 2010," on file with the Planning Division, except as modified by the following conditions. Minor changes to the approved activities and/or operation may be approved by the Director of Community Development if found to be in substantial conformance with the approved exhibits.
2. If additional hours and activities beyond what was stated in the applicant's written narrative, dated "Received June 28, 2010," on file in the Planning Division, are desired, prior City review and approval is required. Such modifications may be approved by the Director of Community Development if found to be in substantial conformance with the approval. The Director of Community Development may also refer the matter to the Planning Commission if the proposed changes would be significant.
3. All conditions of Case UP-90-43 shall remain in full force and effect except as otherwise modified by this approval.
4. The proposed dance club shall be limited to a maximum occupancy of 812 people (patrons and employees).
5. The applicant acknowledges that its music selection, Top 40 mainstream mix, is specifically being accepted and conditioned as provided herein based on the City's experience with similar business establishments with this type of music. If changes to the music selection are desired, prior City review and approval is required. Applicant must submit to the City in writing the proposed new music selections. The Director of Community Development or his or her designee shall have five (5) business days to review the proposal, and either approve, approve subject to conditions, or disapprove, in writing. Decisions of the Director of Community Development may be appealed to the Planning Commission and be heard at their next regular meeting, which appeal will stay the Director's decision. This requirement for prior City approval of a change in music selection is based on the City's experience, and that of other local communities, with

significant negative secondary effects (fighting, loitering, littering, etc.) with other business establishments with different music selections.

6. The business shall comply with Chapter 9.24 of the Pleasanton Municipal Code (Smoking in Public and Work Places). The business owner/operator shall ensure that the outdoor seating area is restricted from use as a smoking area and that "No Smoking" signs shall be installed in conformance with Chapter 9.24 of the Pleasanton Municipal Code.
7. The business owner/operator shall encourage staff to park in the areas of the parking lot that are less used by the patrons of Gateway Square Shopping Center.
8. If the operation of this use results in conflicts pertaining to parking, interior or exterior noise, traffic/circulation, public disturbances, or other factors at the discretion of the Director Community Development, this conditional use permit may be submitted to the Planning Commission for the subsequent review at a public hearing.
9. The exterior doors of the business shall remain closed when not being used for ingress/egress purposes. Except for the entry doors and the doors to the outdoor patio area, all other doors are for emergency exit use only. The applicant shall install and maintain self-closing mechanisms on all exterior doors.
10. No signage is approved with this application. If signage is desired, the applicant shall submit a sign proposal to the City for review and approval prior to sign installation. All signage shall receive approval from the Hacienda Owners Association prior to submitting to the City.
11. At no time shall balloons, banners, pennants, or other attention-getting devices be utilized on the site except as allowed by Section 18.96.060K of the Pleasanton Municipal Code for grand openings.
12. The business owner/operator shall adhere to a "good neighbor" policy, meaning that the operator and employees must respect the rights of neighboring properties and, to the best of their ability, shall ensure their patrons' compliance with the City's noise and smoking regulations and any applicable conditions of approval for the subject business relating to parking location, noise, loitering, etc.
13. This conditional use permit approval will lapse one (1) year from the effective date of approval unless the applicant revises the business license to reflect the new ownership.

14. The subject business shall provide at least limited food service (such as appetizers) during the operating hours of the business. Prior to issuance of a tenant improvements permit or operation of the business, the business owner/operator shall submit a food menu with food service hours for the review and approval of the Director of Community Development.
15. Alcoholic beverages shall not be heavily discounted in price. Prior to issuance of a tenant improvement permit or operation of the business, the business owner/operator shall submit an alcoholic beverage menu with pricing (including "happy hour" or other reduced-price alcohol promotions) for the review and approval of the Director of Community Development and Chief of Police.
16. Within four (4) weeks of the start of employment and every six (6) months following the start of employment, employees that serve alcohol and security personnel shall undergo a security and alcohol training program, such as TIPS (Training for Intervention Procedures), designed to prevent intoxication, underage drinking, and drunk driving.
17. All activities shall comply with chapter 9.04 of the Pleasanton Municipal Code (Noise Regulation). The business owner/operator shall ensure that all disc jockeys (DJs) and musicians are aware of the City's noise regulations.
18. The business owner/operator shall provide security staff during operating hours subject to the satisfaction of the Chief of Police. The business owner/operator shall submit a security plan for the business specifying the numbers of security staff, frequency and area of outside patrols, security staff uniforms, etc. Said security plan shall also include how staging of patrons in queue for admission will be handled. The final security plan shall be submitted to and approved by the Chief of Police prior to operation of the business.
  - a. The business owner/operator shall provide two security personnel to monitor the outdoor patio area whenever it is in use.
19. The business owner/operator (or designated representative) shall regularly monitor the area outside of the business to ensure peace and quiet.
20. The business owner/operator shall utilize an occupancy counting method that can provide Police or Fire personnel with accurate occupancy information quickly and on demand.
21. The business owner/operator shall obtain all necessary approvals from the Department of Alcoholic Beverage Control prior to serving alcohol.

**II. Standard Conditions:**

### Planning Division

1. Changes to the exterior of the building shall not be made without prior approval from the Planning Division.
2. The applicant shall maintain the area surrounding the tenant space in a clean and orderly manner at all times.
3. To the extent permitted by law, the project applicant shall defend (with counsel reasonable acceptable to the City), indemnify and hold harmless the City, its City Council, its officers, boards, commissions, employees and agents from and against any claim (including claims for attorneys fees), action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside, or void the approval of the project or any permit authorized hereby for the project, including (without limitation) reimbursing the City its attorneys fees and costs incurred in defense of the litigation. The City may, in its sole discretion, elect to defend any such action with attorneys of its choice.

### III. **Code Requirements:**

*Applicants/Developers are responsible for complying with all applicable Federal, State, and City codes and regulations regardless of whether or not the requirements are part of this list. The following items are provided for the purpose of highlighting key requirements.*

### Building Division

1. Any tenant improvement plans shall be submitted to the Building and Safety Division for review and approval prior to operation. The applicant shall obtain a building permit prior to commencement of any work. The applicant shall pay any and all fees to which the proposed application may be subject to prior to issuance of building permits. The type and amount of the fees shall be those in effect at the time the building permit is issued.
2. Prior to issuance of a business license, the applicant shall contact the Building Division and the Fire Marshall to ensure that the proposed use of the tenant space meets Building and Fire Code requirements. If required, the applicant shall obtain all appropriate City Permits.

4225 HOPKARD ROAD  
GATEWAY SHOPPING CENTER  
PLEASANTON, CA

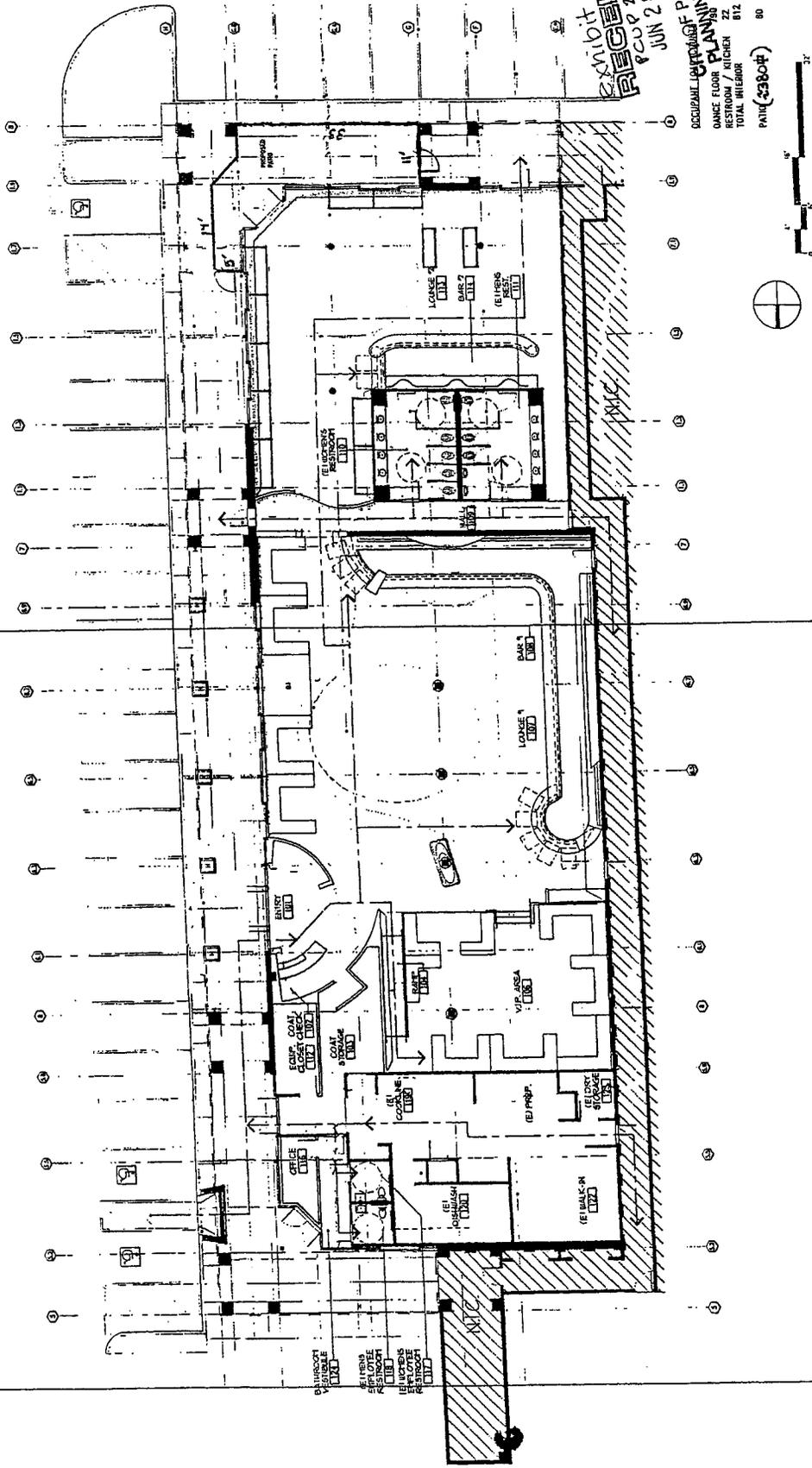
# STATUS

RECEIVED  
EXHIBIT #2  
JUN 28 2010  
COURT REPORTING PLAN

OFFICE OF PLEASANTON  
PLANNING DIVISION  
JUN 28 2010

1/8" = 1'-0"

OCCUPANCY  
DANCE FLOOR / RESTROOM 22  
RESTROOM / KITCHEN 22  
TOTAL INTERIOR 80  
PARK (\$3804#)



**RECEIVED**

PCUP-273

JUN 28 2010

**CITY OF PLEASANTON  
PLANNING DIVISION**

STATUS

Diamond Pleasanton Ent.

Project Narrative.

The purpose of this application is to amend the existing CUP for the nightclub formally known as Aura, located at 4825 Hopyard Road. The CUP amendment would include the following:

1. Install a removable gate,
2. Establish a outdoor patio area, and
3. Increase the maximum occupancy

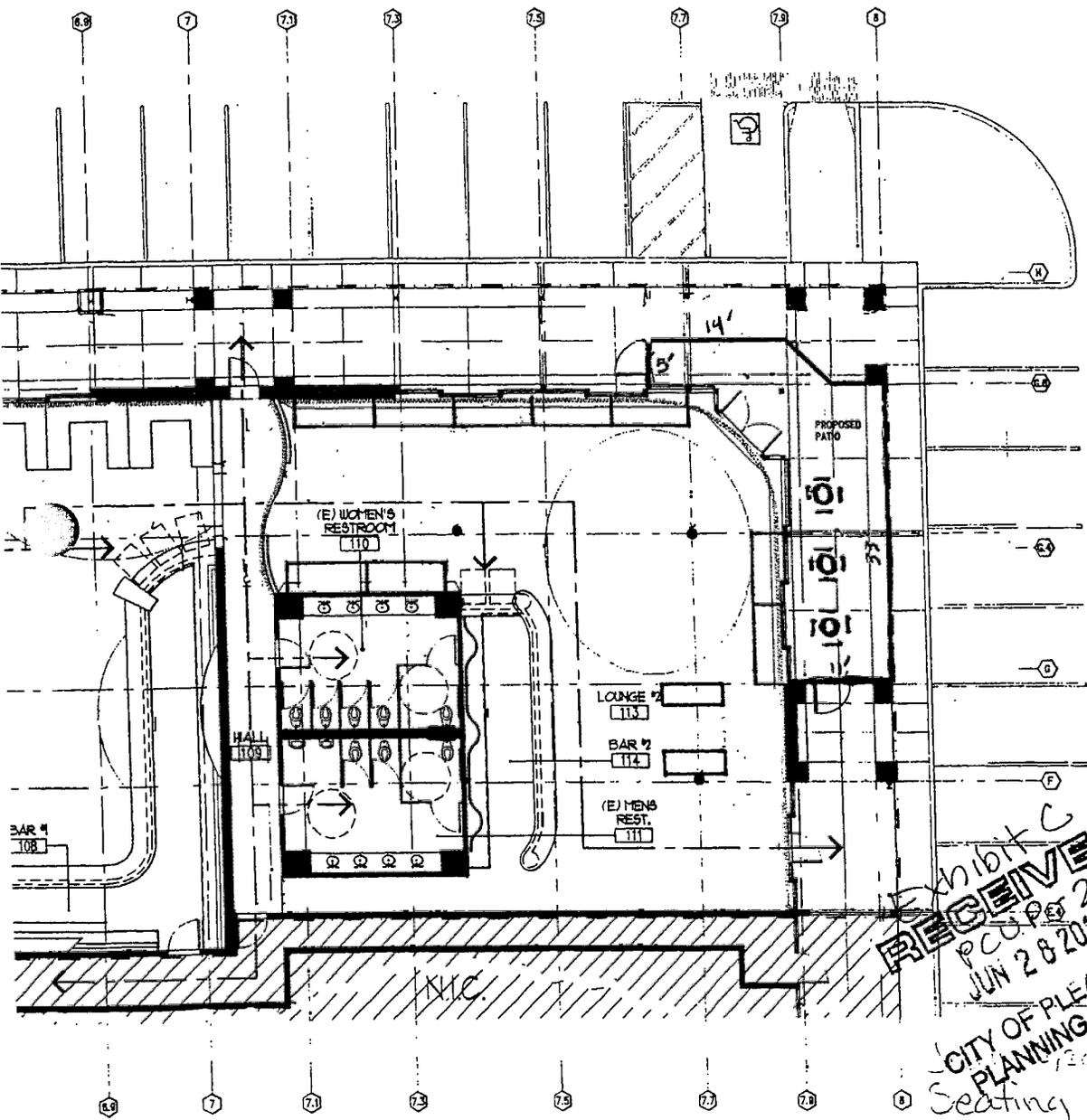
The removable gate and outdoor patio area would be located on the south east corner of the subject site. The attached drawings show the gate dimensions and height at approximately 4.5 feet tall. The gate will be a free-standing, metal gate with proper emergency exiting features.

Once customers enter the club they are not allow to exit and re-enter. The outdoor patio enables the operators to fully monitor all customers and provide top security. The outdoor patio area will enable us to provide our customers with the ability to go out doors for fresh air without leaving the establishment and loitering in the parking lot. The patio area will have its own security and the tables and chairs will be removed at 10:00pm nightly and the area will then become a standing room only. Security will be positioned outside the gate as to not allow anyone in or out of the designated area unlawfully.

We have surveyed the surrounding area to assess the noise issues. Because there are no residential developments nearby and the surrounding businesses are closed by 10:00pm, we feel that noise will not be an issue.

There will be approximately 15 employees to operate the dance club, including 1 to 2 food service staff. Security will be employed on a projection basis. On slow nights, there will be approximately 6 security staff on-site. Busy nights would be staffed with up to 16 security staff on-site. We will be offering an upscale night time entertainment option for adults (21 years and older) that includes live and DJ music for dancing. The music selection will be Top 40 mainstream variety. We will be offering limited food service, with such items as shown on the food menu provided.

Music will be played, dancing will be allowed, and food service (limited on slow nights) will be offered during our business hours (Monday through Sunday, 5:00pm to 2:00am). The space may also be used for office gatherings, special events, and private parties as allowed by UP-90-43. Additionally, the office operations of the business may occur Monday through Sunday, 11:00am to 2:00am, when ordering, inventory, etc. type of duties are conducted.



OUTDOOR Seating Plan

STATUS  
 4825 HOPYARD ROAD  
 GATEWAY SHOPPING CENTER  
 PLEASANTON, CA

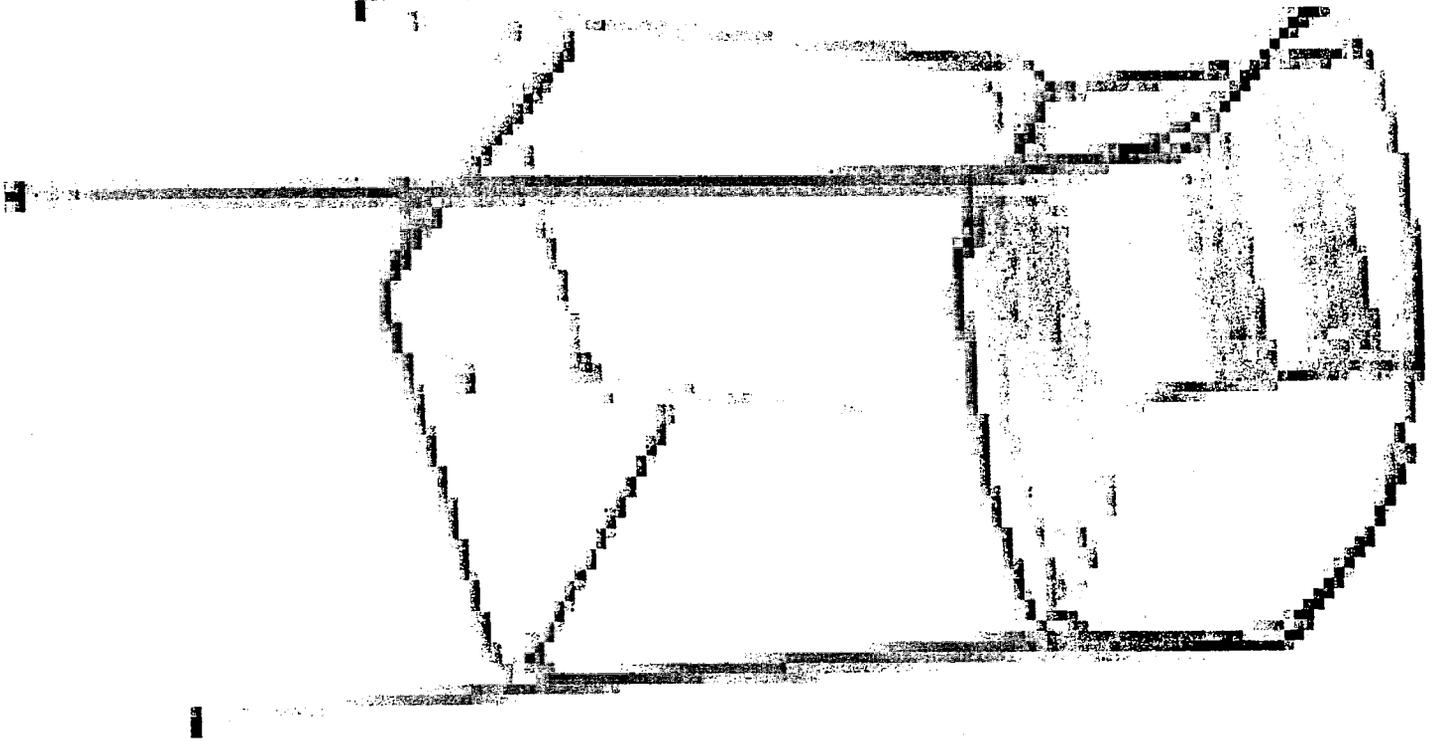
Exhibit C  
**RECEIVED**  
 PCUP 273  
 JUN 28 2010  
 CITY OF PLEASANTON  
 PLANNING DIVISION  
 Seating

OCCUPANT LOAD COUNTS

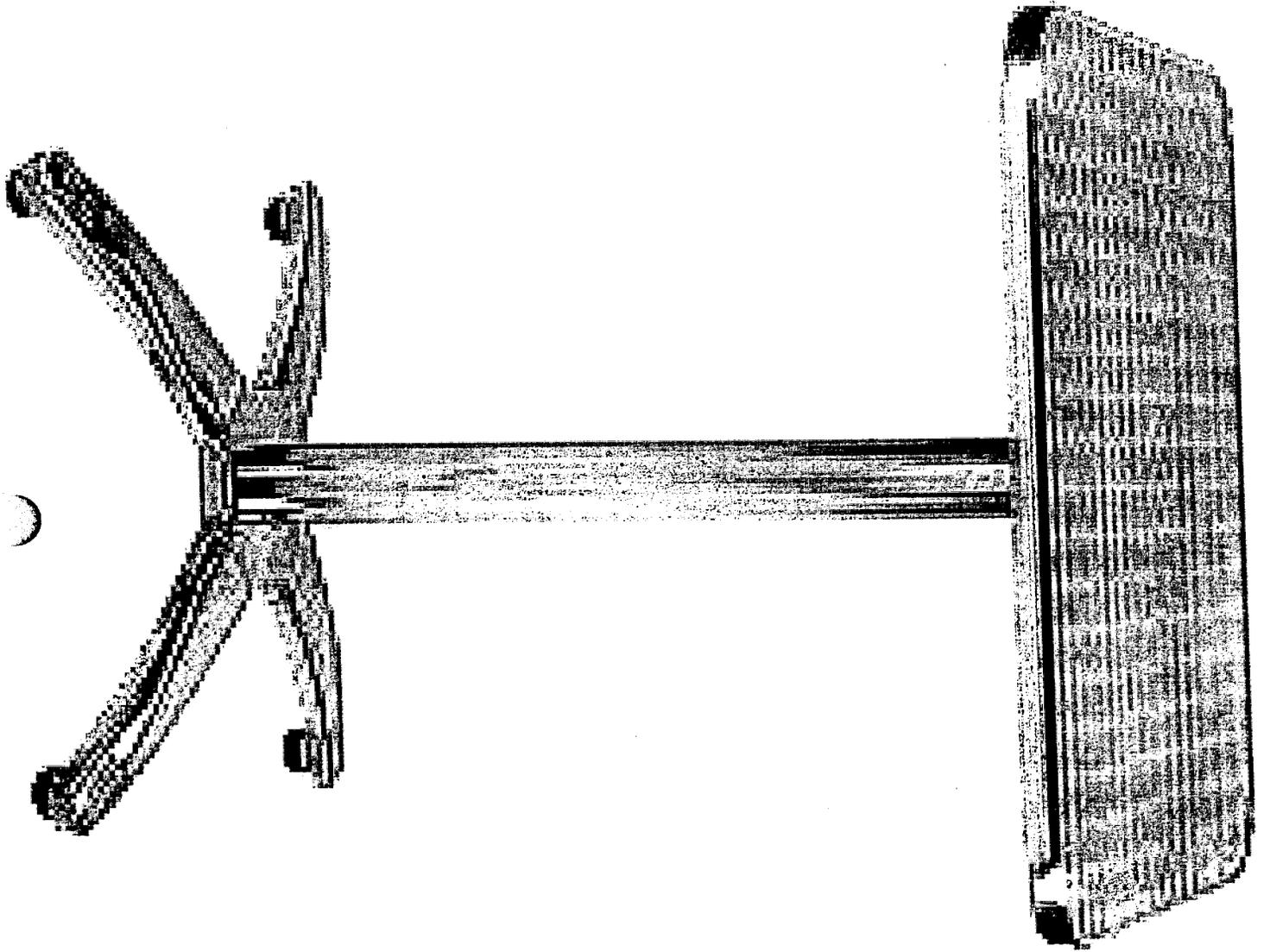
DANCE FLOOR	790
RESTROOM / KITCHEN	22
TOTAL INTERIOR	812
PATIO (4380 #)	80

SEATING PLAN

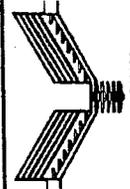
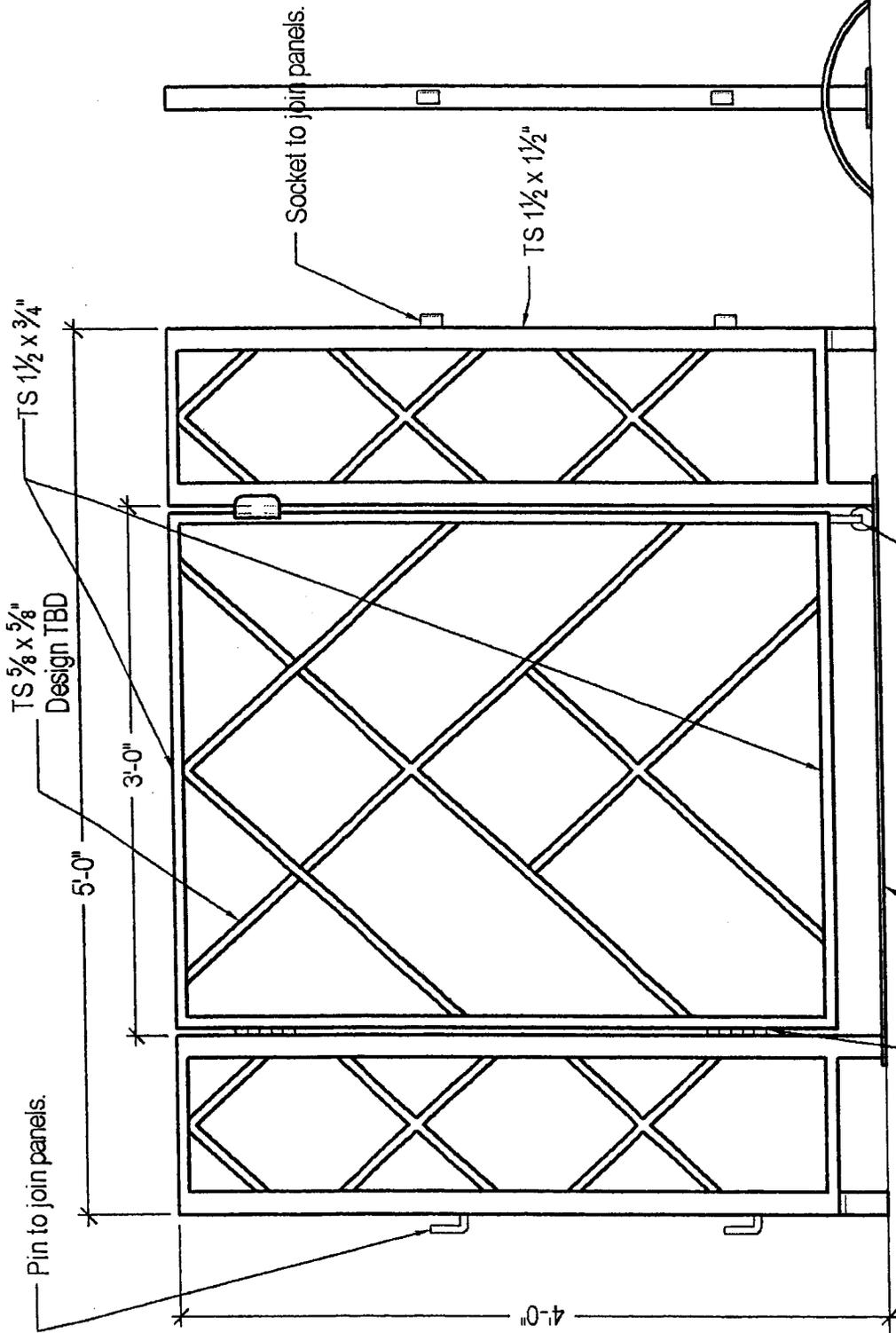
1/8" = 1'-0"



July 15, 1990



15/2010



**F&F STEEL AND STAIRWAY INC.**  
 1775 Monterey Road, Bldg. 46A, San Jose Ca. 95112  
 Phone (408)279-6558  
 Fax (408)280-5747

Project:	Status	Date:
Contractor:	Movable Patio Rail Gate Panel	Drawn by:
		DWG #:

**RECEIVED**  
 JUN 28 2010  
 CITY OF PLEASANTON  
 PLANNING DIVISION



July 6, 2010

Ms. Janice Stern  
Planning Manager  
City of Pleasanton  
200 Bernal Avenue  
Pleasanton, CA 94566

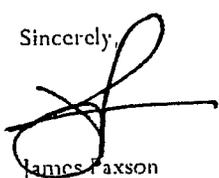
Re: Outdoor Seating  
Diamond Pleasanton Enterprise  
Site 1D, Gateway Square

Dear Janice:

This letter is being provided in accordance with the Declaration of Covenants, Conditions and Restrictions for Hacienda, Article III, Section 3.2, Paragraph 3.2.3, Plan Changes and Plans for Changes to Improvements. The Design Review Committee for the Hacienda Owners Association has reviewed the application for outdoor seating. This application was submitted by MGR Assets, Inc., on behalf of FFHS Gateway L.P., Site 1D, dated June 25, 2010. This modification is in substantial compliance with the guidelines set forth in the Design Guidelines and Covenants, Conditions and Restrictions.

The modification consists of the creation of an outdoor seating area at the south east corner of the building located at 4825 Hopyard Road. This modification is being requested to address the desire of Diamond Pleasanton Enterprises to provide an outdoor seating, standing and smoking area for its customers. A removable fence will be used to enclose a portion of the walk adjacent to the building entrance. The fence will be composed of removable aluminum sections approximately 4.5 feet in height by 4.5 feet in width which will be installed during business hours. The fence will be taken down upon closing and all tables and chairs will be removed from the area nightly at 10:00 pm. Diamond Pleasanton Enterprise will be responsible for keeping the area clean and safe at all times. The design and description for this modification are included on the attached plan sheets.

This application is hereby approved by the Hacienda Owners Association and may be processed for necessary approvals by the City of Pleasanton. Please feel free to contact me at the Association's office if I can be of any assistance in this matter.

Sincerely,  
  
James Paxson  
General Manager, HBPOA

cc: Gene Havrilenko  
Jennifer Wolfes

to: DDD\_email@hacienda.org  
cc: DEVELOP/OPER/DESIGN/APPLIC/MOD

## PLANNING COMMISSION CITY OF PLEASANTON

RECEIVED

ALAMEDA COUNTY, CALIFORNIA

RESOLUTION NO. PC-90-93

JUN 26 2010

RESOLUTION APPROVING A CONDITIONAL USE PERMIT AS FILED UNDER  
 CASE UP-90-43 FOR SH BOOM II, INC., PORTER A HURT, FOR CITY OF PLEASANTON  
 CLUB PLANNING DIVISION

- WHEREAS, SH Boom II, Inc., (Porter A. Hurt) has applied for a conditional use permit to operate a dance club which will serve alcoholic beverages after 10:00pm at a facility proposed to be located at 4825 Hopyard Road; and
- WHEREAS, zoning for the property is PUD (Planned Unit Development) - Industrial, Commercial and Offices District; and
- WHEREAS, at their duly noticed public hearing of October 10, 1990, the Planning Commission considered all public testimony, relevant exhibits and recommendations of the City staff concerning this application; and
- WHEREAS, after considering all public testimony, relevant exhibits, and recommendations of the City staff, the Planning Commission approved a negative declaration for Case UP-90-43; and
- WHEREAS, the Planning Commission made the following findings:

- A. That the proposed location of the conditional use is in accordance with the objectives of the zoning ordinance and the purposes of the district in which the site is located.

The site of the proposed use is located in the Hacienda Business Park's CPD (Retail/Commercial and Financial Planned) District, which permits the uses of the City's C-C (Central Commercial) District. Bars, including entertainment and dancing, are a conditionally permitted use in the C-C District and are in accordance with the purposes of the zoning district to provide locations to offer commodities and services to the residents of Pleasanton and surrounding areas. The use permit for the alcoholic beverage service is, therefore, in accordance with the objectives of the zoning district.

- B. That the proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare, or materially injurious to the properties or improvements in the vicinity.

The proposed alcoholic beverage service and dance club will be contained completely on-site. Sufficient parking, traffic capacity and distance from residential neighborhoods have been provided and the site and building can accommodate the proposed use. The proposed use operates during hours which, and is located in an area where, nighttime uses would not create a nuisance to adjoining areas. Streets leading to the site are designed per City standards and are signalized to provide safe access into and out of the site. The conditions of approval of the use permit, as well as the applicant's design of the tenant space the use will occupy, will ensure that the establishment remains within the standards of all applicable City codes.

- C. That the proposed conditional use will comply with each of the applicable provisions of the zoning ordinance.

The site's PUD zoning permits the establishment of dance clubs and bars, as defined by Municipal Code Section 18.08.028. The proposed dance club complies with all relevant sections of the zoning ordinance. Granting a conditional use permit to Sh Boom II, Inc. for serving alcoholic beverages after 10:00pm is consistent with the City's ability to regulate zoning as listed in the Municipal Code Section 18.124.

WHEREAS, the proposed use is consistent with the zoning designation and General Plan policies of the City of Pleasanton.

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF PLEASANTON RESOLVES THE FOLLOWING:

Section 1. Approves Case UP-90-43, the application of Sh boom, Inc., (Porter A. Hurt) for a conditional use permit to operate a dance club which will serve alcoholic beverages after 10:00pm at a facility proposed to be located at 4825 Hopyard Road subject to the conditions shown on Exhibit "A" attached hereto and made part of this case by reference.

Section 2. This resolution shall become effective 15 days after its passage and adoption unless appealed prior to that time.

THIS RESOLUTION ADOPTED THE PLANNING COMMISSION OF THE CITY OF PLEASANTON ON THE 10TH DAY OF OCTOBER 1990 BY THE FOLLOWING VOTE:

AYES: Commissioners Horan, Hovingh, McGuirk, Michelotti and  
Chairman Mahern

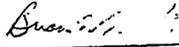
NOES: None

ABSENT: None

ABSTAIN: None

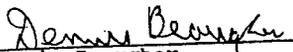
DATE: October 10, 1990

ATTEST:

  
\_\_\_\_\_  
Brian W. Swift  
Secretary

  
\_\_\_\_\_  
Marcelline Mahern  
Chairman

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Dennis Beougher  
Assistant City Attorney

pc9093/sm

EXHIBIT B  
CONDITIONS OF APPROVAL  
UP-90-43

1. That the location and operation of the use shall conform substantially to Exhibit A (the site plan, floor plan, and details of operation), dated September 10 and 19, 1990 on file with the Planning Department. In the event that the applicant proposes to modify the hours of operation as specified in the details of the operation, the modification shall be subject to the review and approval of the Planning Director. The Director may refer the matter to the Planning Commission which may apply additional conditions to the subject conditional use permit, based upon the expanded hours of operation.
2. That the outside doors of the dance club shall remain closed during all hours of operation. A sign to that effect shall be placed by the entry doors.
3. That private parties held on the dance-club premises and catering services provided by the dance club be limited to weekends only, to the hours of 1:00 PM through 5:00 PM, and to a maximum of 300 persons. If, at any time in the future, the private party activities of the operation create a parking nuisance, the Planning Director may require that the use permit be subjected to a review by the Planning Commission. Said review may include the addition of conditions further restricting the hours of operation and number of persons attending private parties.
4. That the limousine associated with the dance club, and provided for its customers as a special service, not be parked on-site during hours when the club is not open for business to the general public.
5. That the applicant obtain all necessary permits from the State and County prior to beginning the operation of the establishment.
6. That if, at any time in the future, the activities of the operation deviate from the above description or the

the dance club encourages loud noise, litter, traffic problems, drunkenness, etc., to the detriment of the surrounding uses or to the City in general, the Planning Commission may review and, if necessary, revoke the subject conditional use permit per Municipal Code Section 18.124.130.

7. That if patrons of the dance club cause problems to occur in the vicinity of the site with regard to traffic control and enforcement by the Police Department (as determined by the Chief of Police), signs shall be erected at all entrances to the Gateway Square Plaza and at the entrances to all parking lots which have access to the plaza. Said signs shall state the enforcement of Section 21107.8 of the California Vehicle Code (CVC) on the subject premises, and shall be designed and located as described in the CVC. In the event that signs are not posted as required above, this approval shall become null and void.
8. That the applicant shall apply for and obtain all applicable City permits for the dance club establishment prior to the commencement of business.
9. That the operation shall comply with all applicable Fire, Building, and Public Health codes, to the satisfaction of the Fire Marshall, the Chief Building Inspector and representatives of the County Health Department. Non-compliance with said codes may result in a Planning Commission review and, if necessary, revocation of the subject conditional use permit per Municipal Code Section 18.124.130.
10. That the owner/manager of the dance club apply for sign review approval for the dance club. If the signs proposed are not consistent with the comprehensive sign program of the Gateway Square shopping center, then the applicant shall apply for Design Review approval of the proposed sign program.

(up9043ca.pc)kjlw  
October 4, 1990

RECEIVED

JUN 28 2010  
CITY OF PASADENA  
PLANNING DIVISION

# STATUS NIGHTCLUB SECURITY AND TRAINING PLAN

- 1) Proper ID checks to insure that the proper age group attends any event. Guests must have in their possession a valid California Driver license, Passport, Military ID or a California ID card with proper backup no exceptions.
- 2) Guests must wait in line for proper identification check and search before entering the venue. ID will be scanned thru picture ID checker , which records everyone entering venue. To ensure everyone is over 21
- 3) Searches prior to entrance for inappropriate substances and weapons. We do not anticipate this with the crowd we are catering to but it is just a precaution
- 4) Security cameras will be in place at all doors and exits, along with taking pictures of ID's
- 5) Proper line management and attitude checks. People who are obviously under some sort of influence (drugs & alcohol), people who do not meet the dress code, and those who are disrespectful of others: are not allowed in the venue that night.
- 6) A dress code will be enforced
- 7) During peak periods (usually 11:00pm to 1:00am) customers arrive faster than ID's can be checked, searched, and collect cover charge. When this happens a line forms. Our outside staff is primarily composed of our most experienced security hosts.
- 8) Stanchions, hand-held video cameras, proper customer relations, adequate staffing, dress code enforcement, and a process called fading are all utilized to keep customers outside under control.
- 9) A line can only be (2) persons wide and may not exceed the edge of the property. Stanchions will be used to control the line and to maintain passage for pedestrians.
- 10) If the lines are longer than the edge of the property, then a count shall be taken of the line and those exceed the legal occupancy must be informed that we are at capacity and that they may not get in regardless of the wait. In this case, individuals will be encouraged to come earlier next time or to try another night.
- 11) There will be at least 2 security patrolling the back gate area and two doing checks of the lot on a nightly bases so people are not lingering in the lots.
- 12) Hours are strictly enforced. No one admitted after 1:30a.m... At 1:30 a.m. "Last Call" starts. At 1:45 a.m. termination of alcohol service. From 1:50a.m. To 2:00am. "Alcoholic Drink Sweep"- Alcoholic drinks swept from club areas. Security staff sweeps parking lot from approximately 1:45 a.m. until customers have left. Last dance varies with each event no later than 1:45am
- 13) If a guest is waiting for another guest to leave the venue he or she must wait on the sidewalk.
- 14) If a guest leaves their coat at coat check after hours, a staff member will collect the claim ticket and bring the guest their belongings at the front entrance. Guests shall not be allowed inside after hours.
- 15) Our security staff will have one or two posts in the parking lot; our front door staff has a constant view of the parking lot, and we will perform two sweeps nightly. Insuring that our customers get to their cars safely is crucial to our success.
- 16) There will be a security presence both in and outside of the building, including on the streets and parking lots around the shopping center.
- 17) After venue is emptied there will be a 2<sup>nd</sup> parking lot sweep lot sweep which will clear the remaining patrons out of the lot.
- 18) All lots will be checked for any litter that was created ,cleaned and removed

To assure an excellent staff, a quality training-program is essential. Training consists of three basic components:

- 1) Initial training: management conducts this training. It features training in company policies and procedures, basic security skills, alcohol awareness training, community relations, and basic emergency procedures.
- 2) Third Party Training: From time to time, outside parties are bought in to conduct supplemental training. Examples of outside parties are police, ABC, independent consultant and emergency medical personnel
- 3) Follow-up/ On-going Training: Formal training ends after the initial sessions are completed. Security staff meets nightly to promote staff development. Management also works with the staff throughout each shift, to continually polish skills.

#### Staff conducts

The staff is managed according to the highest ethical and legal standards.

- 1) Use of disrespectful or overly familiar language, manners, or demeanor towards customers and other employees is never condoned. Remarks made to a customer or another employee of a racist, religious, color, national origin, sexist/sexual, physical or mental handicap are not permitted.
- 2) Employees must focus on our customer by giving them our full attention and service. Employees must perform their duties in a friendly, courteous and satisfactory manner at all times.
- 3) Employees must follow all local, State and Federal laws at all times in both their personal life and in the performance of their job duties in such a manner as not to bring discredit to the operation or themselves.
- 4) A well- groomed properly dressed employee symbolizes the foundation of this company and its image and facilitates communication between customers and staff. All employees will be issued shirts and jackets, which shall be worn while on duty. Security hosts will say Security on back.

#### Alcoholic Beverage Security

When the California State Alcoholic Beverage control Board issues a business one of its privileged licenses, a set of responsibilities come with it. The following are general obligations that our security will help meet:

- 1) Insure patrons are over 21: ID scanners and proper examination, as well as entrance / exit staffing are used to insure that all patrons are over 21. The sale of alcohol to minors is a serious criminal offense and, employees will be held responsible to ensure that there is no violation.
- 2) Over- serving: Our entire staff is trained to look for customers who have had too much alcohol. Once identified, security will notify staff then handle the situation in a manner that will prevent any further consumption, and insure a safe trip home for the individual. This may mean allowing the person to remain on property until time and activity have helped them sober-up, insuring a friend drives them home, or arranging for a cab.
- 3) Employees will be trained thru ABC lead training program.

#### Relations with police and Security

Security must be conducted with an ongoing relationship with local law-enforcement and officials. It is important that we maintain a cooperative relationship to achieve our goals:

- 1) There will be a security host for approximately every 75 customers.
- 2) Uniforms shall be clearly identifying security hosts.
- 3) Security staff will always cooperate with police in every way.
- 4) We will initiate quarterly meetings with a police representative, to discuss relevant issues.
- 5) We will request that the Police department provide occasional supplemental training sessions to our staff.
- 6) We will coordinate with other security in our neighborhood.
- 7) We will cooperate with other governmental agencies that relate to security issues(e.g. ABC)
- 8) We have an open door policy to discuss relevant security issues.
- 9) No weapons defined by Section 12020 of the California Penal Code (including firearms, blackjacks, daggers, and
- 10) All security will be ABC lead trained
- 11) All security will have a livescan and submitted application to the State of California for a PSO card before working

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JUN 28 2010

CITY OF PLEASANTON  
PLANNING DIVISION

## STARTERS

### **Chicken Tenders** \$8.95

Tender white meat, breaded and deep fried until golden brown.

### **Buffalo Wings** \$9.95

Thick, meaty chicken wings, celery and carrots. Served with Ranch or bleu cheese for dipping.

### **Burger Sliders** \$4.95

Two tender juicy mini-burgers, with dill Pickles and cheese

### **Chicken Sliders** \$7.95

Grilled Chicken, Crispy bacon, and Cheddar Cheese

### **Fried Calamari** \$7.95

Lightly breaded, served with a house special Cajun ranch dip.

### **Cheese Sticks** \$6.95

Breaded mozzarella cheese sticks served with Ranch dip or marinara sauce.

## SALADS

### **California Cobb Salad** \$10.50

Iceberg lettuce, Grilled Chicken breast, tomatoe, bacon, Avocado, egg, crumbled blue cheese

### **Chicken Tender Salad** \$9.95

Mixed salad greens topped with pieces of breaded chicken tenders, diced tomatoes, cheddar cheese and croutons with your choice of dressing.

### **Caesar Salad** \$6.95

This classic consists of romaine lettuce tossed with caesar dressing, parmesan cheese and croutons.

*Add Chicken : \$3*

### **Oriental Salad** \$6.95

Mixed salad greens tossed with oriental dressing, topped with sesame seeds and wontons.

*Add Chicken: \$3*

## WRAP

### **Caesar Wrap** \$5.95

Romaine lettuce, caesar dressing, and parmesan cheese wrapped in a homemade 12" flour tortilla.

*Add Chicken : \$3*

### **Spicy Chicken Wrap** \$6.95

Salad mix, spicy chicken, tomatoes, cheddar cheese and our own spicy ranch dressing wrapped in a homemade 12" flour tortilla.

### **Oriental Wrap** \$5.95

Salad mix, wontons and oriental dressing wrapped in a homemade 12" flour tortilla.

*Add Chicken: \$3*

**GRILLED CHICKEN SANDWICH \$8.95**

Grilled chicken breast, lettuce, and tomatoe served with French fries

**Teriyaki Pineapple Chicken Sandwich \$8.95**

A tender chicken breast glazed with teriyaki sauce and topped with a slice of pineapple served on a sesame seed bun. Served with French fries

**Chicken Club \$9.50**

Chicken breast sandwich with bacon, lettuce, tomato, onion, mayo and swiss cheese served on a sesame seed bun.

**BBQ Chicken Sandwich \$9.50**

Chicken breast, crispy bacon, cheddar cheese, Served on a sesame seed bun.

Served with French fries

**Buffalo Chicken Sandwich \$7.95**

A breaded chicken patty covered in our hot buffalo wing sauce, topped with melted pepper jack cheese served on a sesame seed bun. cheese on grilled bread of your choice.

Served with French fries

**BLT \$7.95**

Bacon, lettuce, and tomato sandwich with mayo served on your choice of bread.

Served with French fries

**BURGERS**

**Status Burgers \$9.95**

Sirlion with dill pickle chips, lettuce, tomatoe, red onions

Served with French fries.

**BBQ Bacon \$9.95**

Crispy bacon, cheddar cheese, and barbraque sauce,

Served with French fries

**Teriyaki Burger \$9.95**

This "*sweet little thing*" is a burger glazed with teriyaki sauce and topped with a slice of pineapple and served on a sesame seed bun with lettuce and tomato. Served with French fries

**Big, Hot and Spicy Burger \$9.95**

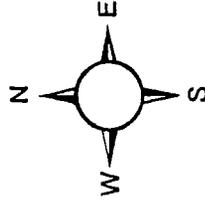
Covered with our hot wing sauce, layered with jalapeños and topped with melted pepper jack cheese, this burger is hot. Served on a sesame bun with French fries.

Diamond Pleasanton Ent./ STAT  
PCUP-273, 4825 Hopyard Road

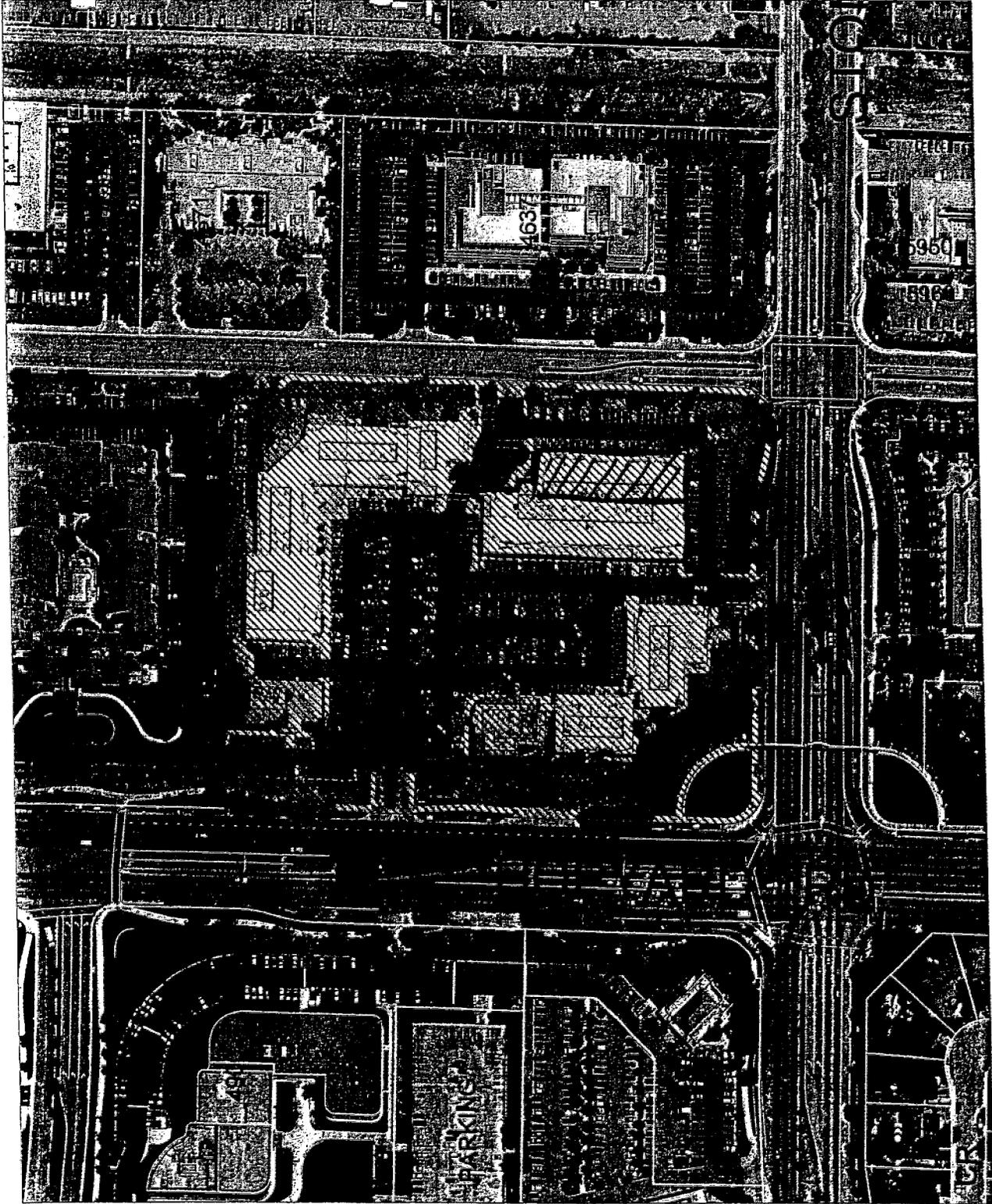
# City of Pleasanton

GIS

Department



Printed 7/27/2010



PCUP-273 PDR-912

City of Pleasanton

GIS

Department

4825 HOPYARD (1000)

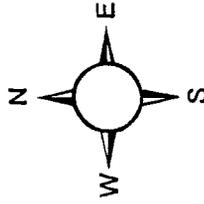
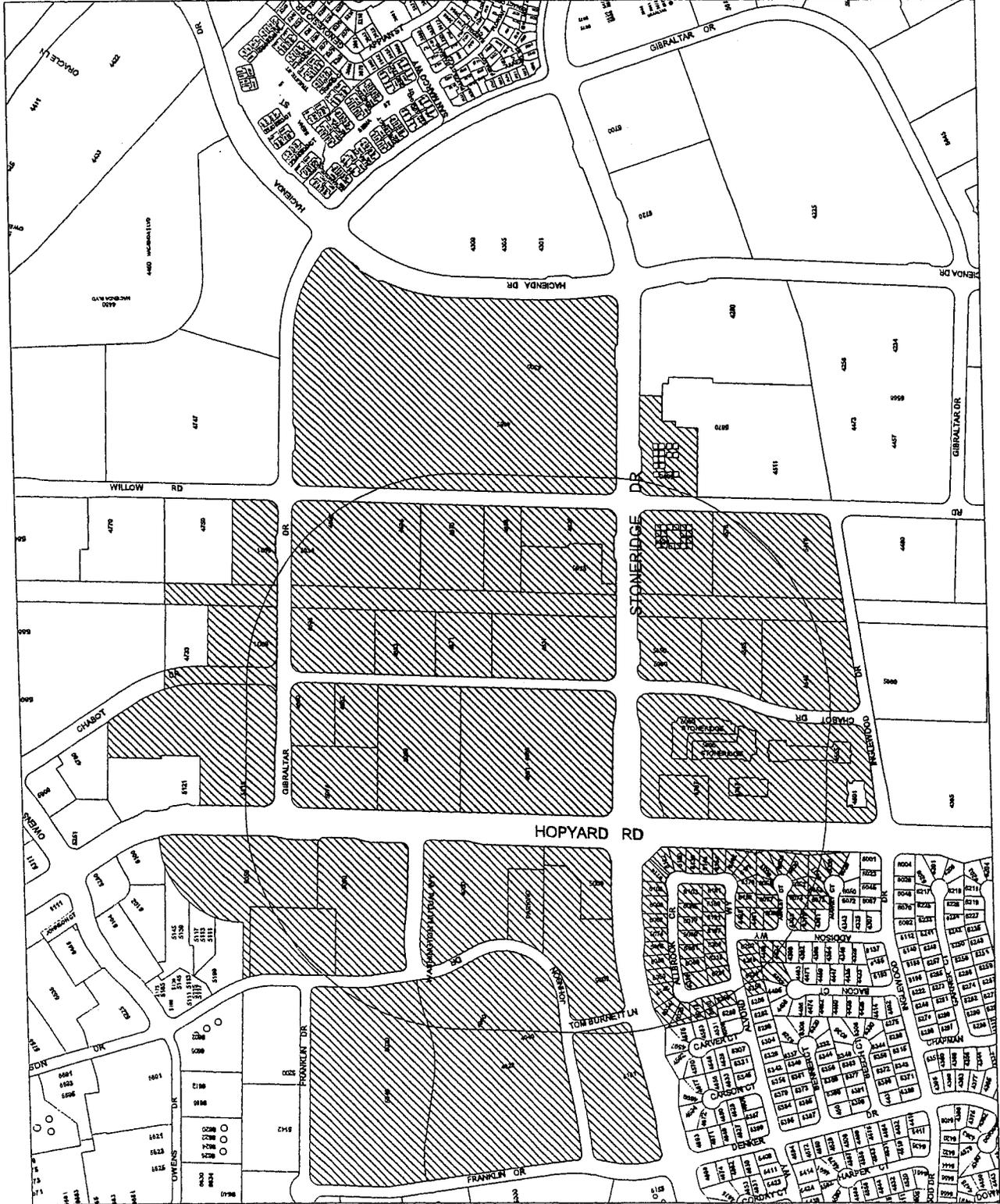


EXHIBIT I

Printed 8/9/2010



Item 6f  
Staff Report  
**PLANNING COMMISSION**  
October 10, 1990

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**SUBJECT:** UP-90-43

**APPLICANT:** Sh Boom II, Inc., Porter A. Hurt

**PURPOSE:** Application for a conditional use permit to operate a dance club which will serve alcoholic beverages after 10:00 PM at a facility proposed to be located at 4825 Hopyard Road. Zoning for the property is PUD (Planned Unit Development) - Industrial, Commercial and Office District (CPD).

**ATTACHMENTS:**

1. Location Map
2. Exhibit A (Site Plan and Floor Plans)
3. Exhibit B (Conditions of Approval)
4. Letter from Hacienda Business Park Owners Association
5. Letters from Applicant
6. Negative Declaration

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#### **BACKGROUND**

The design for Gateway Square, a 104,00 square foot retail commercial center at the northeast corner of Hopyard Road and Stoneridge Drive in Hacienda Business Park, was approved by the City Council in October 1986 (Case PUD-81-35D). The proposed dance club is to be located in a 10,000 square foot portion of Building F of the center. The applicant, Sh Boom II Inc., is intending to serve alcoholic beverages after 10:00 PM and the use is, therefore, designated as a bar under Municipal Code section 18.08.028. Bars are a conditionally permitted use in the CPD in Hacienda Business Park.

#### **PROJECT DESCRIPTION**

The applicant is proposing to operate a 1950's/1960's era dance club which would operate between the hours of 5:00 PM and 2:00 AM, five to seven days per week. Sh Boom II proposes to provide buffet service between 5:00 and 8:00 PM, and offers music and dancing throughout the evening. The club is intending to purchase a limousine to provide driving service to and from the club for

its patrons. In addition, the facility may be rented for private parties during the days or evenings when the dance club is not regularly scheduled to operate.

The applicant proposes a staff of approximately 35 persons, supplemented by an assistant manager, a hostess, door man and two or three observers. The owner also will be in attendance for at least five days a week during selected hours of operation. The facility will accommodate a maximum total of 643 people, with seating provided for 440. Bar stool seating accounts for 196 seats, with booth seating at 88 and table seating at 156. The remainder of the occupant load ostensibly will be carried by the dance floor.

Currently, the 10,000 square foot area of Building F is an unimproved tenant lease space, with a series of full-view glass storefronts and entry doors. The applicant will be making all the interior tenant improvements to suit the needs of the proposed use. These improvements include office space, restroom facilities, two bar areas, a dance floor and disc jockey booth, raised seating areas, a kitchen and an employee lounge. Exterior improvements are minimal and entail removing and relocating some of the existing full view glass doors and replacing them with fixed glass. A minimal amount of glass block will be added to the exterior of the building at the main front door entry.

#### **ANALYSIS**

The site, Gateway Square shopping center, currently contains three other businesses which have applied for and received a conditional use permit to serve alcoholic beverages after 10:00 PM. These uses operate in conjunction with a full-service restaurant and are Chili's, Round Table Pizza and Lyons Restaurant. Sh Boom II is a different type of use in that it would provide entertainment services to its patrons, and serve beverages, but not in conjunction with a restaurant. Food service at Sh Boom II would be limited, so in this respect the proposed facility would not compete with the existing restaurants on-site.

The site has 473 parking spaces. The CPD District of Hacienda Business Park requires free-standing restaurants to provide one parking space for every fifty square feet of floor area. Under these guidelines, Sh Boom II would require 200 parking spaces and the other three restaurants a combined total of 270. As these facilities would experience their peak evening hours of operation during hours when other businesses in the center are not open - i.e., after 6:00 PM - there should be sufficient parking. (These restaurants probably also experience peak hours during lunch-time, when Sh Boom II would not be operating.) In order to attempt to ensure that the dance club creates as little impact on parking facilities for the other restaurants, staff would suggest

that the owner/manager encourage the employees to park in areas of the parking lot that would be little-used by patrons. This would encourage patrons to park as close to the dance club as possible, thereby reducing potential parking conflicts with the patrons of the restaurants, who, no doubt, will want to park as close to the restaurant as possible.

Staff is somewhat concerned about the possibility that the management may rent the Sh Boom II facility for private parties during the day. One of the reasons that staff feels it can support the project is that the dance club is a nighttime use and would not create a parking conflict with the business tenants in the shopping center. The need for parking is not a major issue in the evening, when a large share of the other tenants are not open for business. However, operating the facility during the day, even for private parties which might not generate as many people on-site as the night use, could severely impact the availability of parking spaces provided for patrons of the other tenants.

After the written description of the operation had been filed, and staff had expressed its concerns with the daytime parties, the applicant suggested that he would be willing to limit these private parties to two per month, and hold them only on weekends. He proposes limiting the duration of such parties to four hours, and starting after 1:00 PM. In addition, the applicant would be willing to limit the size of the party to 300 people.

Staff is of the opinion that this is a more workable solution for the issue. However, staff still has concerns about the size of the party. Staff notes that if this tenant space were used as a regular retail space, the parking required (at 1 space per 200 square feet), would be only 50 parking spaces. Staff feels that 300 party patrons during an afternoon weekend still could have an adverse impact on parking and hence, on other retail businesses in the center. Therefore, staff recommends that such parties be limited to 100 patrons. Assuming two persons per car, staff feels that this number is appropriate for the 50 parking spaces which would be used by a typical retail tenant. Staff realizes that it will be difficult to monitor and enforce a limitation on the number of people present at a private party. But, if staff receives complaints from other tenants due to the private party use of this facility, the Use Permit can be reviewed by the Planning Commission and revised if necessary. Staff has added a recommended condition of approval which limits the use of the facility by private parties to two times per month, to weekends only, to the hours of 1:00 PM through 5:00 PM, and to a maximum of 100 people.

Sh Boom II proposes keeping a limousine on-site during its business hours for special client services. Staff has added a condition of approval which limits the hours that the limousine is kept on-site to the hours of operation. This is primarily due

to the fact that the limousine will utilize several parking spaces which could be used by patrons of the day-time businesses and eliminates the potential of unattended storage of the vehicle on-site.

Another concern that might arise is that of noise and associated nuisances generated by the late-night dance-club use. The proposed dance club is located far from the residences at the southwest corner of Hopyard Road and Stoneridge Drive. The club is located at the rear of Building F, situated towards the Chabot Road entrance to the Gateway Square site. Any potential noise generated by the proposed use should not effect residents. However, the applicant is providing acoustical baffling (acoustical ceiling tiles, three-and-a-half inch sound batts in the party walls) and the soffit at the dance floor is designed to house the music system speakers to limit noise within the club. Double doors are proposed in the vestibule to further limit noise outside of the bar and dance area and prevent noise spillover into the parking lot. The dance club also must adhere to the City's noise ordinance (Municipal Code Section 9.04.040), which limits noise levels for commercial properties to 70 dBA at the property line. Staff has added a condition of approval requiring that the club doors remain closed during hours of operation, to help eliminate noise spillover into the parking lot.

The Conditional Use Permit provides the Planning Commission with the opportunity to review and revoke the permit if the owner or management is unable to control the activities of its patrons, and the use becomes a nuisance to the City or surrounding properties. However, the City of San Jose has had no record of noise or nuisance complaints filed against the existing club there.

#### **FINDINGS**

Your Commission needs to make the following findings prior to the granting of a use permit:

- A. That the proposed location of the conditional use is in accordance with the objectives of the zoning ordinance and the purpose of the district in which the site is located.

The site of the proposed use is located in the Hacienda Business Park's CPD (Retail/Commercial and Financial Planned) District, which permits the uses of the City's C-C (Central Commercial) district. Bars, including entertainment and dancing, are a conditionally permitted use in the C-C district and are in accordance with the purposes of the zoning district to provide locations to offer commodities and services to the residents of Pleasanton and surrounding

areas. The use permit for the alcoholic beverage service is, therefore, in accordance with the objectives of the zoning district.

- B. That the proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare, or materially injurious to the properties or improvements in the vicinity.

The proposed alcoholic beverage service and dance club will be contained completely on-site. Sufficient parking, traffic capacity and distance from residential neighborhoods have been provided and the site and building can accommodate the proposed use. The proposed use operates during hours which, and is located in an area where, nighttime uses would not create a nuisance to adjoining areas. Streets leading to the site are designed per City standards and are signalized to provide safe access into and out of the site. The conditions of approval of the use permit, as well as the applicant's design of the tenant space the use will occupy, will ensure that the establishment remains within the standards of all applicable City codes.

- C. That the proposed conditional use will comply with each of the applicable provisions of this chapter.

The site's PUD zoning permits the establishment of dance clubs and bars, as defined by Municipal Code Section 18.08.028. The proposed dance club complies with all relevant sections of the zoning ordinance. Granting a conditional use permit to Sh Boom II, Inc. for serving alcoholic beverages after 10:00 PM is consistent with the City's ability to regulate zoning as listed in Municipal Code section 18.124. The subject application complies with the applicable sections of 18.124.

#### CONCLUSION

Staff is of the opinion that the proposed dance club and bar use is almost ideally situated to provide a safe and nuisance-free environment for patrons and adjacent property owners and uses. The retail shopping center in which the dance club and bar would be located has plenty of parking and few after-hours businesses which would be impacted by noise or competition for patron parking. In addition, the shopping center itself is part of a large industrial park complex. Residences are located far from the site, and are separated from the club by parking lots, other buildings and a major arterial street. The streets providing

service to the site are properly signalized for safe entry and exit. In addition, Sh Boom II is proposing to provide a special limousine service for its patrons, which would help to eliminate possible traffic accidents.

Staff feels that the proposed dance club use will fill an existing need for a social, night entertainment spot for Pleasanton residents. It may bring additional dinner businesses to nearby restaurants. The proposed operation of the dance club seems to ensure that the club is maintained in an orderly and safe manner. That no complaints have been received about the club in its existing San Jose location encourages staff to believe that the management is responsible and sensitive to the local environment.

#### **ENVIRONMENTAL ASSESSMENT**

A draft Negative Declaration accompanies this report. Based on an initial study, staff believes that approval of Case UP-90-43 would not have any significant adverse effects on the environment. If your Commission concurs with this environmental assessment, you must make the finding that the Negative Declaration is appropriate prior to taking action on the project.

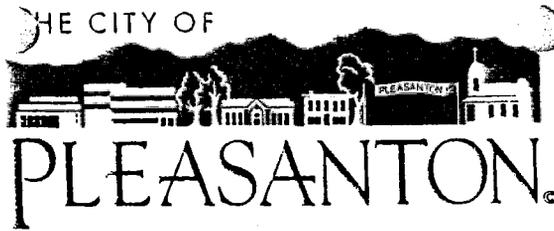
#### **STAFF RECOMMENDATION**

Staff recommends that your Commission approve Case UP-90-43 by taking the following actions:

- 1) Make the Conditional Use Permit findings as listed in the staff report;
- 2) Find that the project would not have a significant effect on the environment and adopt a resolution approving the attached draft Negative Declaration; and
- 3) Approve Case UP-90-43 subject to the conditions listed in Exhibit B.

(up9043.pc)kjl  
October 5, 1990





December 21, 2011

Jenny Wolfes  
4825 Hopyard Road, Unit F10  
Pleasanton, CA 94588

Dear Ms. Wolfes:

**Re: PCUP-273, NOTICE OF VIOLATION for Club NEO (formally known as Club STATUS) at 4825 Hopyard Road**

This letter is to memorialize the meeting of December 20, 2011, to provide written notice of the violations of the Conditional Use Permit (PCUP-273), and to provide information regarding the current application to modify the Conditional Use Permit to allow events for patrons under the age of 21 (P11-0647).

The Planning Division was made aware of incidents occurring on December 17 & 18, 2011, in which an uncontrolled crowd of people were loitering in the parking lot of your establishment, numerous law infractions and potential misdemeanors were witnessed by law enforcement, a report of litter being around the site, and an assessment of lack of establishment security personnel and lack of security measures. The event in question on the 17<sup>th</sup> resulted in the allocation of all available officers of the Pleasanton Police Department responding to the site as well as a request for Mutual Aid from surrounding Law Enforcement agencies (City of Dublin and the Alameda County Sheriff's Department).

A meeting on December 20, 2011, was held with members of the Police Department, staff from the Planning Division, yourself, and the Head of Security for Club Neo, Peter Aguilar, to discuss the events as specified above. The Planning Division reviewed your Conditional Use Permit's conditions of approval. The following are the violations that were verbally indentified at the meeting on December 20, 2011:

1. *Condition Of Approval [COA] #13: The business owner/operator shall adhere to a "good neighbor" policy, meaning that the operator and employees must respect the rights of neighboring properties and, to the best of their ability, shall ensure their patrons' compliance with the City's noise and smoking regulations and any applicable conditions of approval for the subject business relating to parking location, noise, loitering, etc.*
  - The Incident Report (2011-00055619) on record indicates that Club Neo failed to use its best efforts, including COA #19, below, resulting in this

**COMMUNITY DEVELOPMENT**

**P. O. BOX 520, Pleasanton, CA 94566-0802**

Planning	Building & Safety	Engineering	Traffic	Inspection
200 Old Bernal Ave. (925) 931-5600 Fax: 931-5483	200 Old Bernal Ave. (925) 931-5300 Fax: 931-5478	200 Old Bernal Ave. (925) 931-5650 Fax: 931-5479	200 Old Bernal Ave. (925) 931-5650 Fax: 931-5479	157 Main Street (925) 931-5680 Fax: 931-5484

condition of approval being violated in regards to loitering, and impacts to other businesses.

- Based on the Police Department's Watch Report, it appears that a portion of the crowd moved from the Club Neo site to:
  - The Shell Gas Station on Hopyard Rd. and proceeded to "Mob" that establishment. Officers responded to emergency calls from the Shell Station seeking assistance to vacate the relocated Club Neo crowd from that site.
  - The Kelly Moore Paints parking lot area, where Officers had to intervene to stop physical confrontations.
  - The Eddie Papas parking lot area, where Officers had to intervene to stop additional physical confrontations.

The Police Department's Watch Report items described above also demonstrates that the situation at the establishment resulted in impacts to the surrounding property owners and business operators. Therefore, this establishment is not operating in compliance with the intent of this condition of approval for the business to maintain a "good neighbor" relationship.

2. *COA#17: Within four (4) weeks of the start of employment and every six (6) months following the start of employment, employees that serve alcohol and security personnel shall undergo a security and alcohol training program, such as TIPS (Training for Intervention Procedures), designed to prevent intoxication, underage drinking, and drunk driving.*

- At the December 20, 2011 meeting, you, Ms. Wolfes, stated that not all of your employees have obtained this training within four weeks of the start of their employment. Therefore, the establishment is not operating in compliance with this condition of approval.

3. *COA#19: The business owner/operator shall provide security staff during operating hours subject the satisfaction of the Chief of Police. The business owner/operator shall submit a security plan for the business specifying the numbers of security staff, frequency and area of outside patrols, security staff uniforms, etc. Said security plan shall also include how staging of patrons in queue for admission will be handled. The final security plan shall be submitted to and approved by the Chief of Police prior to operation of the business.*

- A search of our records indicates that a Final Security Plan was not submitted to the Chief of Police prior to operation of the business. Therefore, the establishment is not operating in compliance with this condition of approval, and as was discussed at our meeting, inadequate security was a significant contributing factor to the incidents on Dec. 17th.

4. *COA#20: The business owner/operator (or designated representative) shall regularly monitor the area outside of the business to ensure peace and quiet.*

- Based on the content of the December 20, 2011 meeting, it was stated that Peter Aguilar, Head of Security (designated representative noted above) was aware of the large group of people congregating in the parking lot, the confrontation between patrons/loiters in the parking lot, the presence of Police Officers on-site, and the later presence of Law Enforcement Officers from other agencies on-site attempting to control the crowds in the parking lot. The initial situations in the parking lot were not resolved by the establishment, nor were the escalated events that followed. Therefore, the establishment is not operating in compliance with this condition of approval.

5. *Standard COA#2: The applicant shall maintain the area surrounding the tenant space in a clean and orderly manner at all times.*

- Based on photos presented at the meeting on December 20, 2011, the presence of trash, glass alcohol bottles, and other alcohol containers were discarded throughout the site and the Officer reports indicate that the discarding of trash was by the patrons of the establishment and loiters who had tried to enter the establishment. Therefore, the establishment is not operating in compliance with this condition of approval.

Future violations of your establishment's Conditional Use Permit's conditions of approval could result in the automatic suspension of the Conditional Use Permit approval per Pleasanton Municipal Code section 18.124.130. Suspension requires that Club Neo immediately stop all operations. Following a suspension, the case would be taken to a Planning Commission hearing. The Planning Commission would be asked to consider modifying/tightening the current conditions (e.g., the number of occupants allowed, additional security measures, etc.) or a full revocation of the approval, thus resulting in the full discontinuance of the use.

Given the situation outlined above, staff cannot provide a positive recommendation to the Planning Commission on your application to modify the current Conditional Use Permit to allow the operation of events for patrons under the age of 21 (P11-0647). Staff would be recommending denial of the request if you choose to proceed to a hearing at this time.

Furthermore, the current application is a modification of the current use permit and the staff report prepared by staff to the Planning Commission would contain all relevant information of the operations of the establishment, including calls for service, incidence reports, etc. The Planning Commission, upon reviewing the staff report, could deny the request for the additional operations and modify any portion of the approval for the establishment's existing operations or even direct staff to proceed with revocation of the current Conditional Use Permit in its entirety.

If you would like to request a delay in scheduling of the P11-0647 application, please provide a written request to staff by January 4, 2012.

Finally, I understand that you have retained an attorney, Mr. George Mull, who has contacted Julie Harryman, Assistant City Attorney for the City of Pleasanton. Unless you advise that communications should be through your attorney, I will continue to communicate directly with you regarding the recent incidents as well as your current application

Sincerely,



Rosalind Rondash

Attachment:

Approval letter for PCUP-273, dated August 30, 2010

CC:

Peter Aguilar, 1177 Branham Lane #410, San Jose, CA. 95118

James Paxson, Hacienda Owners Association, 4473 Willow Road, Suite 105, Pleasanton, CA 94588

Chief Spiller, Pleasanton Police Department

Capt. Finn, Pleasanton Police Department

Nelson Fialho, City Manager

City Attorney's Office, City of Pleasanton

Brian Dolan, Director of Community Development

Janice Stern, Planning Manager

Steve Otto, Senior Planner

P11-0647 File

PCUP-273 File



August 30, 2010

Jennifer Wolfes  
Diamond Pleasanton Enterprise  
4825 Hopyard Road  
Pleasanton, CA 94588

Dear Ms. Wolfes:

**SUBJECT: PCUP-273, Diamond Pleasanton Enterprises**

At its meeting of August 25, 2010, the Planning Commission approved Case PCUP-273, your application to modify the approved Conditional Use Permit (UP-90-43) for the operation of Status (formerly Aura Nightclub) located at 4825 Hopyard Road to allow an outdoor seating/standing area and to increase the maximum occupancy at the facility. Approval was granted subject to the Conditions of Approval of the staff report as shown in the attached Exhibit A.

In accordance with Section 18.144.010 of the Pleasanton Municipal Code, the City Council may elect to review this action within 15 business days of the date of approval (September 9, 2010) or at its next regular meeting (September 7, 2010), whichever is later. Therefore, approval of the Conditional Use Permit will become effective on September 10, 2010, unless appealed prior to that time. The Planning Commission's decision may be appealed to the City Council by submitting an application for appeal with a letter stating the basis for the appeal, along with a fee in the amount of \$25.00, to the City Clerk's Office at 123 Main Street, Pleasanton, prior to the expiration date of the appeal (September 9, 2010).

If you have any questions concerning this matter, please feel free to call.

Sincerely,

Janice Stern  
Planning Manager

c: Gene Havrilenko, FFHS Associates – Gateway LLP, 395 Railroad Ave., Suite 9, Pittsburg, 94565  
Karen Diaz, City Clerk

**COMMUNITY DEVELOPMENT**

**P. O. BOX 520, Pleasanton, CA 94566-0802**

<b>Planning</b> 200 Old Bernal Ave. 925-931-7600 Fax: 925-931-7600	<b>Building &amp; Safety</b> 200 Old Bernal Ave. 925-931-7600 Fax: 925-931-7600	<b>Engineering</b> 200 Old Bernal Ave. 925-931-7600 Fax: 925-931-7600	<b>Traffic</b> 200 Old Bernal Ave. 925-931-7600 Fax: 925-931-7600	<b>Inspection</b> 123 Main Street 925-931-7600 Fax: 925-931-7600
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**EXHIBIT A  
CONDITIONS OF APPROVAL**

**PCUP-273, Diamond Pleasanton Enterprise  
1825 Hopyard Road  
August 25, 2010**

**I. Project Specific Conditions:**

**Planning Division**

1. The proposed business activities and operation shall conform substantially as described in plans, narrative, and other materials (Exhibits B, C, F and G), dated "Received June 28, 2010," on file with the Planning Division, except as modified by the following conditions. Minor changes to the approved activities and/or operation may be approved by the Director of Community Development if found to be in substantial conformance with the approved exhibits.
2. If additional hours and activities beyond what was stated in the applicant's written narrative, dated "Received June 28, 2010," on file in the Planning Division, are desired, prior City review and approval is required. Such modifications may be approved by the Director of Community Development if found to be in substantial conformance with the approval. The Director of Community Development may also refer the matter to the Planning Commission if the proposed changes would be significant.
3. All conditions of Case UP-90-43 shall remain in full force and effect except as otherwise modified by this approval.
4. The proposed dance club shall be limited to a maximum occupancy of 812 people (patrons and employees).
5. The music selection shall be maintained as proposed (Top 40 mainstream mix). If changes to the music selection are desired, prior City review and approval is required. Such a modification may be approved by the Director of Community Development. The Director of Community Development may also refer the matter to the Planning Commission if the proposed changes would be significant.
6. The business shall comply with Chapter 9.24 of the Pleasanton Municipal Code (Smoking in Public and Work Places). The business owner/operator shall ensure that the outdoor patio area is restricted from use as a smoking area and that "No Smoking" signs shall be installed in conformance with Chapter 9.24 of the Pleasanton Municipal Code.

7. The business owner/operator shall designate a smoking area (20 feet from any door or opening). Said area shall have two (2) portable ashtrays provided.
  - a. Said smoking area shall be monitored and kept clean.
8. The business owner/operator shall encourage staff to park in the areas of the parking lot that are less used by the patrons of Gateway Square Shopping Center.
9. If the operation of this use results in conflicts pertaining to parking, interior or exterior noise, traffic/circulation, public disturbances, or other factors at the discretion of the Director Community Development, this conditional use permit may be submitted to the Planning Commission for the subsequent review at a public hearing.
10. The exterior doors of the business shall remain closed when not being used for ingress/egress purposes. Except for the entry doors and the doors to the outdoor patio area, all other doors are for emergency exit use only. The applicant shall install and maintain self-closing mechanisms on all exterior doors.
11. No signage is approved with this application. If signage is desired, the applicant shall submit a sign proposal to the City for review and approval prior to sign installation. All signage shall receive approval from the Hacienda Owners Association prior to submitting to the City.
12. At no time shall balloons, banners, pennants, or other attention-getting devices be utilized on the site except as allowed by Section 18.96.060K of the Pleasanton Municipal Code for grand openings.
13. The business owner/operator shall adhere to a "good neighbor" policy, meaning that the operator and employees must respect the rights of neighboring properties and, to the best of their ability, shall ensure their patrons' compliance with the City's noise and smoking regulations and any applicable conditions of approval for the subject business relating to parking location, noise, loitering, etc.
14. This conditional use permit approval will lapse one (1) year from the effective date of approval unless the applicant revises the business license to reflect the new ownership.
15. The subject business shall provide at least limited food service (such as appetizers) during the operating hours of the business. Prior to issuance of a tenant improvements permit or operation of the business, the business

owner/operator shall submit a food menu with food service hours for the review and approval of the Director of Community Development.

16. Alcoholic beverages shall not be heavily discounted in price. Prior to issuance of a tenant improvement permit or operation of the business, the business owner/operator shall submit an alcoholic beverage menu with pricing (including "happy hour" or other reduced-price alcohol promotions) for the review and approval of the Director of Community Development and Chief of Police.
17. Within four (4) weeks of the start of employment and every six (6) months following the start of employment, employees that serve alcohol and security personnel shall undergo a security and alcohol training program, such as TIPS (Training for Intervention Procedures), designed to prevent intoxication, underage drinking, and drunk driving.
18. All activities shall comply with chapter 9.04 of the Pleasanton Municipal Code (Noise Regulation). The business owner/operator shall ensure that all disc jockeys (DJs) and musicians are aware of the City's noise regulations.
19. The business owner/operator shall provide security staff during operating hours subject to the satisfaction of the Chief of Police. The business owner/operator shall submit a security plan for the business specifying the numbers of security staff, frequency and area of outside patrols, security staff uniforms, etc. Said security plan shall also include how staging of patrons in queue for admission will be handled. The final security plan shall be submitted to and approved by the Chief of Police prior to operation of the business.
  - a. The business owner/operator shall provide two security personnel to monitor the outdoor patio area whenever it is in use.
20. The business owner/operator (or designated representative) shall regularly monitor the area outside of the business to ensure peace and quiet.
21. The business owner/operator shall utilize an occupancy counting method that can provide Police or Fire personnel with accurate occupancy information quickly and on demand.
22. The business owner/operator shall obtain all necessary approvals from the Department of Alcoholic Beverage Control prior to serving alcohol.

ii. **Standard Conditions:**

**Planning Division**

1. Changes to the exterior of the building shall not be made without prior approval from the Planning Division.
2. The applicant shall maintain the area surrounding the tenant space in a clean and orderly manner at all times.
3. To the extent permitted by law, the project applicant shall defend (with counsel reasonable acceptable to the City), indemnify and hold harmless the City, its City Council, its officers, boards, commissions, employees and agents from and against any claim (including claims for attorneys fees), action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside, or void the approval of the project or any permit authorized hereby for the project, including (without limitation) reimbursing the City its attorneys fees and costs incurred in defense of the litigation. The City may, in its sole discretion, elect to defend any such action with attorneys of its choice.

iii. **Code Requirements:**

*Applicants/Developers are responsible for complying with all applicable Federal, State, and City codes and regulations regardless of whether or not the requirements are part of this list. The following items are provided for the purpose of highlighting key requirements.*

**Building Division**

1. Any tenant improvement plans shall be submitted to the Building and Safety Division for review and approval prior to operation. The applicant shall obtain a building permit prior to commencement of any work. The applicant shall pay any and all fees to which the proposed application may be subject to prior to issuance of building permits. The type and amount of the fees shall be those in effect at the time the building permit is issued.
2. Prior to issuance of a business license, the applicant shall contact the Building Division and the Fire Marshall to ensure that the proposed use of the tenant space meets Building and Fire Code requirements. If required, the applicant shall obtain all appropriate City Permits.

{end}

## Neo Nightclub Overview

On **October 1<sup>st</sup>, 2011**, Neo nightclub re-opened its doors for business. On that evening, Lt. Jim Knox and Sergeant Tamm went to the club and spoke with the club owner, Jenny Wolfes. Knox introduced himself as the swing shift watch commander Wednesday through Saturday evenings and also as the District 2 commander. Knox told Wolfes at this time that we as a police department would like to work with her to provide resources such as training and assist her in resolving any issues that may arise during their operation. Wolfes was thankful and asked to have a drug and drug influence awareness class provided to their staff. This was arranged and provide to their staff on November 4th.

On the evening of Saturday, **November 26<sup>th</sup>**, a large crowd was in attendance at Neo and required the allocation of 9 officers to assist their security personnel at closing time. After this incident, Lt. Knox met with Wolfes at Club Neo on December 2<sup>nd</sup>. Knox explained the issues which had occurred on the previous Saturday and explained that the police department could not sustain that allocation of that type of resource as a result of her club operations. Knox explained to Wolfes that they must have security personnel monitoring the parking to prevent problems as a result of drug, alcohol and violence issues. Wolfes told Lt. Knox that she would have her security consultant present the following evening to come up with a game plan to eliminate problems. Lt. Knox further reiterated that the police department would work with her and her staff to help find a solution.

*Club Neo was at capacity this evening. They had a live performer, "R.O.D. Live" advertised for this evening. The crowd was largely from out of the area. Early swing shift was held due to the potential for problems. At about 0030 hrs, about 100 unhappy people were turned away. At closing time a very large crowd swarmed the west lot and a "sideshow" type environment appeared to be forming. The 9 officers on scene with the help of 16 Neo security personnel were able to clear the lot with no incidents.*

*DEA called to advise they had 12 units doing surveillance for a gang investigation in the area of NEO. They had no specific information of projected violence at or around the club.*

On **December 2<sup>nd</sup>**, Lt Knox met with Jenny Wolfes outside Club Neo at approximately 2120 hours. Knox explained to her that the club needed to have security monitoring the parking lots. He explained the prior Saturday Evening and the resources which were allocated because of the attendance at the club. Knox Explained to Wolfes that the department could not sustain that type of service and things would have to change. She told Knox that her security consultant would be at the club the following evening to assess the attendance and make suggestions on how to alleviate the problems. Knox told Wolfes that PPD was willing to work with her and the club and we would like to deal with problems before they happen. She assured Knox they would take

care of it. Wolfes stated she believed max capacity to be in the 850 range but state they try to maintain around 650 people inside.

**Saturday, December 3rd, 2011**

*Club Neo was filled to capacity. The two incidents below occurred as the club was closing.*

**11-53456 242 PC:** A 26 year old male resident of Hayward was found walking in the Club Neo lot with head wounds. The male said he was "Jacked" in the lot. He was unwilling to provide officers with suspect or additional info. He was taken to Eden Hospital with minor scalp lacerations.

**11-53458 647f PC:** Officer Stocking saw an intoxicated male urinating in the p-lot near Club Neo. A 46 year old male resident of Oakland was arrested and booked into SRJ.

On the evening of **December 8<sup>th</sup>**, Lt. Knox spoke with Wolfes by telephone at 1950 hours. She told Lt. Knox that she was working with her security consultant and would have 22 security staff present on Saturday evening. She said they would have 4 security officers in the parking lot with spot lights and bullhorns. She also mentioned that she was considering having golf carts brought in to provide mobility to the security personnel in the large lot. Wolfes also stated the guest list would be cut off early (10:00 pm) and the cover charge would be raised, all in attempts to "fade" people. This evening turned out to be relatively uneventful.

**Saturday, December 10rd, 2011**

*The Neo Nightclub was again filled to capacity with a large number of patrons waiting to get inside. Besides a couple of public intoxication arrests, the event was orderly.*

On the evening of **December 17<sup>th</sup>**, Lt. Knox spoke with Wolfes at 2050 hours as a follow-up to the previous weekend. Wolfes told Knox that she would have similar staffing and procedures to the previous weekend for that coming Saturday and she had brought in police type barricades to help prevent free flow of patrons in and out of the club. She indicated they would stop letting people into the club at midnight.

On the evening of **December 18<sup>th</sup>**, the club attendees created similar issues to those on November 26<sup>th</sup> only crimes were committed and due to the volume, they could not be controlled by the 10 PPD officers and 3 Dublin units present. This crowd was estimated to be about 600-700 people and there was an estimated 25-30 crimes committed in the parking lot. Pushing and shoving matches were witnessed, fights occurred, people were threatening each other making shooting type gestures with their hands or tapping their waistbands signaling they had weapons, bottles were being thrown from moving vehicles, people were being bumped with cars and knocked down, they were riding on cars and there were cars spinning their tires and driving

recklessly in the lot. After the patrons left the Neo lot, an estimated 100 people drove to the nearby Shell station and looted the store and took over the parking lot. Officers arrived and were able to disperse this crowd. (PPD Report 11-55619)

On **December 20<sup>th</sup>**, the police department staff met with the city attorney and staff from code enforcement and planning. The conditional use permit for Neo was reviewed and several violations were identified. Lt. Knox called Wolfes and asked for an immediate meeting that afternoon with all the stake holders present. Wolfes agreed and a meeting took place with Wolfes, her security consultant Peter Aguilar and the above mentioned city personnel. Wolfes was told of the previous weekend events and provided a copy of the documentation created as a result. She was told of all the identified conditional use permit violations and told to come into compliance asap. She was further told to provide an amended security plan to the department by the end of business on December 22nd. In addition, a flyer was shared with Ms. Wolfes for an event planned on that Friday evening. It was expressed to Wolfes that there were over 600 people confirmed as "attending and over 500 as "maybes". We expressed to Wolfes that the Pleasanton Police Department did not have the resources available to police an event of that size. Wolfes spontaneously stated that she would simply not open her club on the 23<sup>rd</sup> as she was not advertising the event and did not want problems. The club was in fact closed on the 23<sup>rd</sup>.

Several days passed and Wolfes did not submit the amended security plan as requested. Lt. Laurence contacted Aguilar on **December 27<sup>th</sup>** and only after this contact was he emailed an amended security plan.

On **December 31<sup>st</sup>**, the department put together an operational order with ancillary staffing to deal with any potential issues related to Club Neo. The department had several officers monitoring the parking lot, who located intoxicated individuals who could not care for themselves. These incidents were documented in reports, as well as some other observations of issues.

***11-57395, warrant arrest:** We stopped a male resident of Oakland in the parking lot of Club Neo and cited him out on a warrant.*

***12-00009, 647(f) PC:** We located a male resident of Fremont passed out in a vehicle in the Club Neo parking lot. He had vomited on himself, and security officers said they were aware of him and had placed him in the vehicle for his own safety. He was booked at SRJ.*

***12-00013, 647(f) PC:** We located a female resident of Oakland arguing with security at the front of Club Neo. She repeatedly refused security's requests to leave the premises. She was arrested and booked at SRJ.*

Lt. Elerick contacted Wolfes on **January 3<sup>rd</sup>** and told her he would meet with Lt. Knox upon his return from vacation and review the amended plan with him and get back to her afterward.

**On January 6<sup>th</sup> 2012**, Lt. Elerick and Sergeant Tamm were given a flyer for a planned event on 01/07/12 (Birthday Bash). They contacted Wolfes and notified her that they were concerned by the content of the flyer and felt that the event was going to create issues for the club again. They were seeking information from Wolfes so that they could plan appropriate staffing for the event. Wolfes said she did not have the event scheduled and she did not advertise it.

**On January 6<sup>th</sup>**, about 1820 hours, Lt. Knox spoke with Wolfes to follow-up with her on the event. She informed Knox that she located the individual who was advertising the Birthday Bash and spoke with him, she told him he must relocate the event for the following evening, which he did. I agreed to meet with Wolfes the following night at the club.

**On Saturday January 7<sup>th</sup>**, Lt. Knox met with Wolfes and noted the implementation of some of her procedural changes. He also noted another C.U.P violation, as her smoking area was in violation of PMC. Knox had a lengthy conversation with Wolfes regarding procedures for handling incidents such as fights, intoxicated persons and how security staff should interact with patrons. He encouraged her and her staff to call for police assistance at the earliest signs of a problem.

*12-00943 DUI: Officer Kroutil stopped a female (24) from Desoto Texas, after she left Club Neo and traveled S/B on Hopyard Rd. in the N/B lanes. She failed FST's and elected to have a blood draw. Booked at SRJ.*

*12-00945 DUI: Officer Pittl stopped a female (24) out of Stockton after she left Club Neo and made an unsafe turning movement. She failed FST's, registered a .14 BAC and was booked at SRJ*

**On January 13<sup>th</sup>**, at 1910 hours, Lt. Knox spoke with Wolfes by phone to discuss suggestions for security plan changes or amendments and to see where she was with compliance to the previously identified C.U.P. violations. This conversation lasted approximately 30 minutes and included numerous suggestions, including upgrading their ID checker system. Lt. Knox had Officer Tujague go to the Sunshine Saloon to identify what type of ID capture system they utilized and upon receiving the information, called Wolfes back and provided her the Manufacturer information and model number which is used by them. Knox provided Wolfes the website information and looked at the different models while on the phone with Wolfes. Wolfes told Knox she would work on the amended security plan with the suggestions provided to her and resubmit to Knox before or upon his return on Wednesday January 18<sup>th</sup>.

**On January 14<sup>th</sup>**, a large scale fight broke out inside the club which insighted additional fights including as many as 100-200 patrons. The patrons fled outside the club and the fights continued. During the course of one fight in the north parking lot a 23 year old male was shot in the leg. Outside assistance was summoned and ultimately 39 officers responded to Neo or to assist with policing the city while officers dealt with the shooting at Neo. Responding agencies included Livermore Police, Dublin Police, Alameda Sheriff's office and California Highway

patrol. In addition, fire department personnel from LPFD and paramedics from Paramedics plus also responded to this scene. PPD case 12-1965

**On January 18<sup>th</sup>**, at 1726 hours, Knox received an amended security plan via email from Wolfes' attorney, George Mull. An acknowledgement email was sent in reply. No other communication has come from Wolfes to Knox.

**On January 20<sup>th</sup>**, the Director of Community Development issued an automatic suspension letter for NEO's conditional use permit. The letter was given to NEO's attorney George Mull. a Mull and the city attorney's appeared in Federal Court and argued their points regarding a TRO blocking the automatic suspension of the C.U.P. The judge ruled in NEO's favor and NEO may remain open for business this weekend.

Officer Yee conveyed that one of the security guards for Neo told him that during the fight and shooting, he removed his security shirt and ran off to get away from the situation. I was also informed by Sgt. White of DPS that per an individual he knows that was present, security started the fight when they struck a female patron in the face.

**On January 21<sup>st</sup>**, PPD completed an extensive operational order as a contingency plan if similar activities were to occur as previous Saturday weekends. The club was kept to low numbers, 158 per security staff count and NEO was also turning away potential patrons based upon their residence city (e.g., City of Richmond etc.) There were numerous security officers present, 29 stated by Neo management. Attorney George Mull was present at the club along with Wolfes and Aguilar. There were no noted problems and follow-up inspection of the property in the morning showed it was left clean.

**On January 26<sup>th</sup>**, Lt. Bretzing and Lt. Knox met with Wolfes at 1400 hours at PPD to discuss the security plan and proposed changes moving forward. Wolfes indicated she was going to bring in some new DJ's\performers and she intends to change the club format beginning February 17<sup>th</sup>. She indicated that the format on Friday nights would be salsa\salsa rock and they would be serving tacos during these events. She further indicated she would still be opening just Friday and Saturday nights. She is working on a Saturday format but did not want to comment on it yet as it was unconfirmed. Wolfes indicated she would provide a new business plan Monday or no later than mid-week the following week. She further indicated that her former manager (Sinbad) has been let go and that Pete Aguilar (security consultant) has been hired as the manager and will be present each night the club is open. She indicated that she is going to contract with established promoters to promote the club's new format. She conveyed that she received information that Karma (club in Dublin) may be responsible for the former promotions which she was unaware of and did not authorize. When asked about a commitment to occupancy reduction she stated that she could not commit to that, as that would be up to Randall Weil (the plastic surgeon who Mull advises us is now the majority owner of the club). When asked if they would be committing to the recommendations sent to Julie Harryman via email by George Mull,

she stated that those were intended as temporary fix until we met on January 30<sup>th</sup>. She said she does not welcome party buses but does not believe she can control their drop-offs but feels they will be an issue moving forward with the new format. She stated that she would purchase the new ID checking system which Lt. Knox recommended to her but had not done so as of yet. She stated her count system was based upon ticket sales and a clicker at the exit. She was asked to have two counters at the door (1 entry and 1 exit) so a count could be readily established when requested and she agreed to do so in support of tickets sales. Wolfes provided the name and phone number for her security provider and reiterated that they have been unable to get the video from the night of the shooting.