

**PLANNING COMMISSION MEETING**  
**COUNCIL CHAMBERS, RICHMOND CITY HALL**  
1401 Marina Way South, Richmond, CA  
January 22, 2009  
7:00 p.m.

**COMMISSION MEMBERS**

Virginia Finlay, Chair  
Stephen A. Williams  
Charles Duncan

Vice Chair Nagarajo Rao  
Jeff Lee, Secretary  
Vacant

The meeting was called to order by Chair Finlay at 7:07 p.m.

Chair Finlay led in the Pledge of Allegiance.

**ROLL CALL**

**Present:** Chair Finlay, Vice Chair Rao, Secretary Lee and Commissioners Duncan and Williams

**Absent:** None

**INTRODUCTIONS**

**Staff Present:** Janet Harbin, Kieron Slaughter, Carlos Privat, Joe Light, Lina Velasco, Hector Rojas, Alan Wolken and Mary Renfro

**MINUTES**

October 16, 2008

**ACTION: It was M/S (Rao/Williams) to accept the minutes of October 16, 2008; unanimously approved (Finlay abstained).**

November 6, 2008

Chair Finlay and Commissioner Duncan noted minor corrections to the minutes, which were distributed to staff.

**ACTION: It was M/S (Rao/Lee) to accept the minutes of November 6, 2008; unanimously approved.**

**CONSENT CALENDAR**

Chair Finlay provided an overview of the Consent Calendar, meeting procedures for speaker registration and public hearing functions and procedures. She said certain items approved by the Commission may be appealed in writing to the City Clerk by Monday, February 2, 2009, by 5:00 p.m. and announced the appeal process after each affected item.

Secretary Lee noted Consent Calendar Items consisted of Items 3, 4, 5, 6 and 7.

Chair Finlay noted Item 5 is a hold over to February 5, 2009. A member of the public requested the removal of Item 4.

**ACTION: It was M/S (Rao/Duncan) to adopt the Consent Calendar consisting of Items 3, 5, 6 and 7; unanimously approved.**

**Items Approved:**

- 3. PLN08-069 – Bart Parking Structure Design Review Permit & Variance, Macdonald Avenue between 15th and 16th Street - PUBLIC HEARING** to consider a Design Review Permit and Variance for height and minimum parking stall dimensions for a 762-stall parking structure with 9,400 SF of ground floor commercial space at the Richmond BART Station located on Macdonald Avenue, between 15th and 16th Streets (APN: 540-072-018). Office/Retail/Institutional (City Center Specific Plan) Zoning District. Bart, owner; Richmond Community Redevelopment Agency, applicant. Planner: Lina Velasco. Tentative Recommendation: Conditional Approval.
  
- 5. TPM/V PLN08-060 – Kowalski Residential Tentative Parcel Map & Variance, 367 Western Drive - PUBLIC HEARING** to consider approval of a Tentative Parcel Map to subdivide an existing residential lot into two lots, and a variance for minimum lot width, and side yard setback for an accessory structure at 367 Western Drive (APN: 558-185-003). SFR-2, Single Family: Very Low Density Residential District. Stephen & Patti Kowalski, owners/applicants. Planner: Kieron Slaughter. Tentative Recommendation: Hold Over To 2/5/2009.
  
- 6. PLN08-078 – Dominos Pizza Conditional Use Permit, 3431 Macdonald Avenue - PUBLIC HEARING** to consider approval of a Conditional Use Permit for a new takeout restaurant in an existing commercial tenant space at 3431 Macdonald Avenue (APN: 516-192-010). C-2, General Commercial District. Aguilera Alfredo & Alicia, owners; Zafar Khan, applicant. Planner: Kieron Slaughter. Tentative Recommendation: Conditional Approval.
  
- 7. PLN08-080 – Good For The Soul Café Conditional Use Permit, 300 Macdonald Avenue - PUBLIC HEARING** to consider approval of a Conditional Use Permit for a new restaurant in an existing commercial tenant space at 300 Macdonald Avenue (APN: 538-200-002). C-1, Neighborhood Commercial. Richmond Labor & Love Comm. Dev., owner; Good for the Soul Community Café, applicant. Planner: Kieron Slaughter. Tentative Recommendation: Conditional Approval.

**Brown Act – Public Forum – None**

**Item Discussed:**

- 1. Study Session on Green Building Ordinance - STUDY SESSION** on Green Building Ordinance: A proposal to add Section 15.04.890--Green Building requiring the new construction or renovation of certain buildings to meet environmentally preferable standards. Planner: Joe Light.

Joe Light presented a PowerPoint presentation, discussed the definition and emerging principles of green building design and said cities will codify practices in order to regularize results and equalize expectations. In July 2007, directed staff to develop an ordinance to cover public and private development, which suggests the City lead by example, commit to measures, and by taking steps, others would be inspired to follow along. At the hearing, the Council expressed that the program could be extended to the private sector and directed staff to develop a proposal for a commercial green building ordinance.

Goals and issues driven by green building are prescribed in agreements like the Mayor's Climate Protection Agreement, addressing reduction of greenhouse gases, and further environmental accords the City has adopted mandates green building ordinance, green building provisions, sustainable building approaches and reduction of GHGs by 10% and energy consumption by 20% over the next 13 years. In addition, the State has adopted an energy requirement of net zero for all new residential homes by 2020. Systems being recommended are those referenced in the ordinance. In order to standardize measures, many organizations have been drafting measures and specific means of weighing project achievement based on those measures. All have guidelines and checklists which can be used to determine the level of achievement.

Among competing guidelines, the LEED program is sponsored by the Green Building Council and for residential buildings Build It Green is headquartered in Berkeley and has become a predominant organization in the region. Staff is recommending adoption of both systems in the program as done with the municipal ordinance.

Mr. Light presented examples of the checklists of Build It Green, and discussed their residential guidelines, points for additions, and a score of 50 points is considered to be passing for certification from the organization. The LEED system has score sheets for new construction, both exterior and interior, it has separate score sheets for buildings that construct a core and shell without interior finish, and has programs for those that would improve the interior or renovate existing buildings.

Staff is recommending renovations be covered for commercial buildings and at this time, staff is not recommending residential buildings that are only being renovated be covered by the ordinance. Those covered would be all new single family homes, single family additions subject to design review and all multi-family buildings. Staff is recommending on the commercial site that the minimum threshold be 5,000 square feet of conditioned space for construction and renovation.

Mr. Light discussed the green points system, said the average score for projects out of 288 points is 113 points, with a current high score of 309 points (due to extra credits). On multi-family projects the average score is 86 points and the current high score is 145 points. The LEED system has four levels of achievement; a certified, silver, gold and platinum, based on various levels of achievement. The City's municipal ordinance requires commercial buildings and institutional buildings to be a LEED silver rating or the equivalent for smaller projects that do not have enough points to get to the silver rating. Residentially, the ordinance requires all projects to have a 70 point score.

The recommendation for achievement levels staff is presenting for the current ordinance is:

- New single-family homes under 1,750 square feet: Minimum of 50 points

- New single-family homes over 1,750 square feet: graduated, higher level of achievement at 55 points with an added 2 additional points for every 100 square feet.
- Residential Additions: multiplier with a 50 point threshold for those subject to design review, and an additional 2 points for any additional 100 square feet for an addition that is over 1,200 square feet.
- Multi-family projects: Flat 60 points regardless of the size for buildings three units or larger.
- Commercial projects: Tier 1 of 5,000-20,000 square feet: Minimum of LEED certified. For 20,000 square feet, a higher level at silver LEED certified.
- Renovations: Percentage of points that would be equivalent to a certified rating for buildings under 20,000 square feet and the equivalent to a silver rating for buildings over 20,000 square feet be required. An applicant would need to meet with staff to review the scope of the project for potential points.

Many cities have adopted green building programs and many are also considering them similar to the City of Richmond's. Almost every town has adopted the Build It Green and the LEED programs for their programs. There are a variety of achievement levels jurisdictions are requiring. Many are adopting minimum requirements of 50 points up to 110 points (City of Rohnert Park). Commercial requirements range from the gold to certified levels. Therefore, staff is proposing Richmond fall in the higher middle range.

Regarding the process, both Build It Green and the LEED systems have training programs. Raters are trained and empowered to respect projects for certification for Build It Green. The LEED system has trained accredited professionals to do verification and submit applications for certification of their program. The City has trained and is in the process of training the entire Building and Planning Staff in the Build It Green system and Jonelyn Whales is currently an accredited LEED professional. Several employees will take the higher examination of green building raters, as well.

The proposal is not to require third party verification for any project subject to the ordinance in the City, but that the City will do the certification itself. Staff intends to fold this requirement into the existing building and planning process and no new steps are required to meet this ordinance.

Vice Chair Rao questioned whether City building fees would be increased as a result of inspections. Mr. Light said there is no projected increase to fees at this time; however, as the program is implemented, if it becomes an encumbrance on the budget, this may be considered.

Vice Chair Rao questioned if any study has been done as to whether or not financial burdens would be placed on single family builders or homeowners. Mr. Light said many studies have been done on the cost of green building. The rule of thumb is that a green building will cost 1% to 3% more than a standard building, but that those costs incurred in construction and planning will be offset from savings in energy efficiency, resale values, and higher rents. A study was done by the California Sustainable Building Task Force in 2003, as well as the Massachusetts Technology Collaborative. At that time, both determined there would be a cost increase of \$4/square foot, but that within 20 years, the cost savings from green building would average \$67. In 2006, the Capital LEED Group had lowered the expected cost premium to \$3 and the cost savings to \$71. As more builders, developers and architects gained more experience in green building, the cost premiums seem to be coming down. A 2007 study by Davis Landing Group took a sample of commercial buildings constructed, assessed the cost of those buildings

based on LEED achievement and they found there was no correlation whatsoever between a LEED and non-LEED building based on costs. To some degree, a green building is expected to be of higher quality. The City of Santa Rosa instituted a vigorous program to determine start up costs. Their conclusion from taking a standard production building, taking the checklist and standard measures which could be used by an applicant to reach 5 different levels of achievement under both systems, and they cost it out. Their conclusions were that a residential, new single family home at 2,500 square feet, achieving 100 points would incur a cost premium between \$2,171 to \$12,487, which translates to \$1.07/square foot to \$4.99/square foot.

For commercial, their models were 11,250 square foot one-story retail building and a 45,000 square foot three-story office building. The costs for exceeding Title 24 by 15% standard of excess were determined at \$2.68 to \$3.62/square foot for the one-story retail building and \$1.47 to \$1.78/square foot for 45,000 square foot office building. These are numbers are within the standard fluctuation of interest rates and are readily achievable. The increase in costs are very modest on the 4 tiers of achievement reviewed beyond the minimum, raising higher only when one gets to a net zero building, and this high rating includes installation of photovoltaic. Therefore, one should expect a small increase from the very start, expect a larger premium if one tries to back in measures after the planning and development stage, and overall in assessment of all costs, there should be extensive cost savings over time.

A very recent study on cost savings was completed by the Core Star Group in Maryland who sampled 1,300 LEED buildings. They determined that rent premiums of \$11.33/square feet were garnered over non-LEED buildings and they had a 4.1% higher occupancy rate. Farmers Insurance is offering discounts in insurance for green buildings which might be considered, as well.

Vice Chair Rao confirmed with Mr. Light that there would be savings with heating and air conditioning energy systems and studies also show benefits of having a healthier workplace building which increase productivity, sales, rent and resale values.

Commissioners Duncan and Williams thanked Mr. Light for his excellent presentation.

Secretary Lee pointed out that for multi-family, green building would generate an average of 4% higher commercial rents with a cost less than 3% in construction costs and felt it makes economic sense.

Secretary Lee referred to page 5, Green Points Scoring Projects Statistics, and noted a single-family home has an average score of 113. He asked if this correlated directly to the required points in the ordinance of 55 points for single-family residences over 1750 square feet. Mr. Light said yes, the current system is above what staff is recommending for minimum requirements; however, the new systems that will appear over the next year will be more difficult. The Title 24 2008 requirements will come on line in August 2009. Build It Green will update their scoring requirements and it is expected the achievement of difficulty will increase, as well. Therefore, it is likely that the minimum achievement points will increase; however, it must be noted that people voluntarily do this and does not necessarily translate into everyone covered by the City's ordinance.

Chair Finlay confirmed that staff will expect the ordinance to become effective on August 1, 2009 when the new Title 24 requirements go into effect. Therefore, the City needs to file findings with the Energy Commission based on Title 24 requirements.

Chair Finlay questioned if the California legislature has moved forward a credit or rebate for solar installations through 2008 within the state, and Mr. Light said federal tax credits have expired and are expected to return, but he was not sure at what time this would occur. The City has waived its permitting fees for solar systems, and it is expected the waiver will be extended.

Chair Finlay said she has always been concerned about tenant improvements, said the threshold is 5,000 square feet and she asked if Mr. Light was confident a tenant improvement can be accomplished while meeting the point system. Mr. Light said there is some flexibility; this is why staff is recommending a 35% for tenant improvements up to 20,000 square feet, which is what is required for a LEED certified project able to assess the entire point allowance in the system. A tenant improvement project would need to be discussed with staff to determine the scope of the project and its percentage. Staff would also not require energy equivalent achievements for tenant improvements, as would be required in other projects.

Chair Finlay said she can appreciate the City not wanting to unfairly burden the homeowners or developers with additional costs and was pleased to see that the provision has been made flexible by the City Council. However, she was concerned with staff time and questioned if an option could be in place where the developer could choose to either use City services for verification or could choose to use a third party source. Mr. Light said this can be done and was covered under Attachment G; Draft Implementation Procedures. The City however would have the right to verify the third party verification and should it appear to be inaccurate, the City would have the ability to step in.

Chair Finlay confirmed with Mr. Privat that the ordinance was created and reviewed by the Attorney's office. She questioned if there was something in the ordinance that makes reference to meeting the requirements of the Draft Green Building Implementation Guidelines, as she wants to ensure the document is legally included. Mr. Light said the implementation processes are reference in the ordinance under Section 6.46.050, page 8 of the Attachment.

Mr. Light confirmed with Chair Finlay that the Planning Commission did not need to take any action on the item, and that comments and input will be included in the official record.

#### Public Comments:

Kerry Benthall, said, assuming the net zero goal by 2020 equates to 288 points, if the City starts at 50 points, he questioned how a developer would sync up with the 20 points per year increase and the appropriate timelines since projects often take 2-5 years for development.

Mr. Light said projects are approved with whatever point system is in place at their project approval time, and it is not the City's intention to change this. He believed this was an evolving system and process; the State will most likely be issuing new requirements over the next 11 years, building codes will evolve, and there may be gaps and differences from various agencies, so the City will assess this

Commissioner Duncan referred to Attachment A-Applicability; Paragraph B relating to historic structures, and said LEED is moving toward acknowledging and instituting separate criteria for historic buildings. He questioned if Build It Green was also doing the same. Mr. Light said they are not; staff tried to address this in the ordinance, indicating that any design guideline is not "trumped" by the green building ordinance. Staff is cognizant of this and will ensure historic structures are not compromised as a result of the ordinance.

Vice Chair Rao said he believed the process and program are great and he supported the ordinance and staff's work.

- 2. CU 1101606 – Alvarado Bar & Grill Revocation of Conditional Use Permit, 12889 San Pablo Avenue** - PUBLIC HEARING to determine whether grounds may exist to revoke Conditional Use Permit CU1101606 for a restaurant with Alcoholic Beverage Sales located at 12889 San Pablo Avenue (APNs# 524-010-002, -028, -029, -030, and -001), in the C-2 General Commercial District. If the Commission finds that grounds may exist, it shall direct staff to schedule a permit revocation hearing. Ray Smith, owner. Planner: Janet Harbin/Mary Renfro. Tentative Recommendation: Schedule A Revocation Hearing.

Secretary Lee recused himself from participating in the matter due a financial interest instituting a conflict of interest, and he left the Chambers.

Chair Finlay discussed hearing protocols, noting the applicant is the City of Richmond and said the decision by the Planning Commission will be whether or not to proceed with scheduling a revocation hearing. She confirmed there were 2 speakers pro and 7 against.

Assistant City Attorney Mary Renfro said the City received numerous complaints formerly called Alvarado Garden's failure to comply with conditions of approval of the CUP, specifically that there was a failure to install landscaping required (Condition 1), failure to comply with the sign ordinance (Condition 3), there were repeated violations of hours of operation (Conditions 10 and 11), a failure to keep the back door locked and parking lot free of litter, alleged noise violations (Condition 30). She met with Mr. Smith and his attorney, Mr. Peter Haas, the property owner's attorney, discussed what Mr. Smith needed to do to bring the property into compliance, and staff continues to monitor compliance. Because the initial hearing had been scheduled in September or October to determine whether there is enough evidence to go forward and have a formal revocation hearing, they determined that the property owner was moving forward in complying with the CUP conditions and it was taken off the agenda. However, staff continued to receive complaints and the item was re-scheduled.

The current status of landscaping and parking lot improvements are completed. She has visited the business many times and checked the back door which has been found to be locked. The sign is posted on the back door that states to use the front door. When problems are found, she contacts Mr. Haas to address compliance, which has been addressed immediately. She has visited the premises at 10:30 and 11:00 p.m. and has never found the business open past operating hours. However, it does look like they have not complied with the sign ordinance.

The purpose of the hearing is to allow parties to discuss evidence, and the Planning Commission can determine whether or not there is enough evidence to schedule a permit revocation hearing. Based upon evidence, the Planning Commission could alter or revoke the CUP.

Vice Chair Rao questioned hours of operation and noise violations. Ms. Renfro said allegations have been made that there are parties in the parking lot after 11:00 p.m. She has some calls for service to the police department, but there is no evidence found that an actual party has been shut down. She heard indirectly that the hours of operation are to cease at 10:00 p.m. and have all customers out of the building by 11:00 p.m. and at times they are cleaning up, have the back door open, and this is viewed at times by neighbors as a party.

Vice Chair Rao questioned whether or not the City has sent any official notices to comply to the business. Ms. Renfro said yes, Code Enforcement Officer Alma Munjia worked on the case for a long time prior to her informing Ms. Renfro. There were many notices of violations, notices to comply and many, many citations sent. It was at that juncture that she contacted Mr. Smith and then Mr. Haas contacted her. This is when meetings were initiated to address compliance issues discussed. The Code Enforcement Officer requested the Planning Department bring forward a CUP revocation hearing, and Mr. Smith's attorney then became involved.

Chair Finlay questioned why the sign was not in compliance. Ms. Renfro said there was a sign permit issued, but it had not yet been executed and there was some dispute between the property owner and the business owner as to who was responsible for executing the permit. She believed this week, either the property or business owner came in to the City to get a new sign permit, so a permit was issued but not yet executed.

Chair Finlay invited the first speaker in favor of revocation to speak for 10 minutes.

Virginia Fletes, said she wanted to correct errors in the staff report;

- Page 1, zoning reads C2 Highway Commercial and it should also be SF3, which is single family residential.
- Page 2, first paragraph, 4<sup>th</sup> line; "On May 17, 2005 the Planning Commission approved the Conditional Use Permit", which should be "May 19, 2005 the Planning Commission approved the Conditional Use Permit" (which she said was a Thursday).
- Page 2, second paragraph, first line; "A restaurant opened at this location on or about January 17, 2005". This should be changed to "2007", And, "...closed on or about April 30, 2007. Another restaurant Pit Boss Barbecue opened on or about October 20, 2007. In August 2008, Planning and Building Services staff learned of concerns..." She said she actually contacted the City of Richmond on October 24, 2007 and the "August 2008" is in error. Alma Munjia told her in an email that they had begun a tenant investigation on November 7, 2007, but it was not in August 2008.

Ms. Fletes said as stated, the permit was originally approved by the Planning Commission in May 2005 and approved on appeal by the City Council in August 2005. The permit is for an eating establishment with alcohol beverage sales. The parking lot of the establishment is located in a residential zone. When Mr. Smith appeared before the Planning Commission on May 19, 2005, one of the statements he made was that as a resident and business owner, he had a vested interest in seeing that the business is well run and that the local neighbors and community are happy with how things are going. He wanted to start with a clean slate and not inherit past issues from previous owners. Mr. Smith was given that opportunity and now she is here to discuss whether grounds exist for revoking his permit. In October 2007, she contacted the City to voice concerns regarding non-compliance of the CUP. Concerns related to Conditions 1, 7, 22, 26 and 29.

On December 4, 2007, Code Enforcement Ms. Munjia met with Mr. Smith and Mr. Ling, the tenant, to discuss improvements that had been completed to the property. Four violations still remained and Mr. Smith requested a 3-4 month extension to abate the violations. However, the extension was not granted. Mr. Smith was given 60 days to address all violations. During the on-going investigation, the property owner was given endless opportunities to comply which he did not. Eventually, two administrative citations were issued and still the property owner continued to be in non-compliance. Clearly, the property owner and tenant deliberately chose to ignore the conditions and ignorance cannot be used as an excuse. It was not until the property owner was threatened with a revocation hearing in July 2008 that an effort was made to comply with the CUP. Even then, they did not fully comply and appeared to drag their feet.

Originally, the first revocation hearing was scheduled for July 11, 2008. Work did not begin on the parking lot until September 24, 2008. From October 2, 2008 until November 7, 2008, no work was done on the parking lot. It was a safety hazard for pedestrians and cars. On October 20, 2008, she attended a meeting with Mary Renfro and Peter Haas to discuss concerns. Main concerns were:

- The back door continued to be open and patrons were entering and exiting it;
- The establishment was having parties after 10:00 p.m. (violation of condition 10). The most recent party on October 19, 2008 included a fight in the parking lot. As of October 20, 2008, 3 after hour parties have been held, 2 more were held in October after their meeting for a total of 5. The dates of the parties were: February 17, 2008, August 17, 2008, October 19, 2008, October 24, 2008 and October 31, 2008.
- The parking lot and landscaping were begun but stopped. It was a safety hazard and we wanted to know when it would be completed.
- The garbage was not being picked up. They had 5 large receptacles not being picked up weekly. The garbage cans were overflowing and bags were being placed on the ground. When the garbage was picked up, it was picked up by Mira Vista Maintenance and Construction, owned by Mr. Smith.
- The recycling scavengers were going through the receptacles late at night and early in the morning, waking up neighbors closest to the establishment. We asked if they could move the receptacles to an existing locked, fenced area.
- Signage for Condition 23 was not posted in the parking lot, which states, "It is unlawful to enter, be or remain on adjacent parking lot or adjacent public sidewalk with an open alcoholic beverage container RMC Section 11.04.030." And there was no trash receptacle in the parking lot.
- The meeting ended with Mr. Haas telling her that he would contact the owner and tenant to discuss concerns. We agreed to meet again in November after the elections. On November 8, 2008, someone showed up and began to plant trees and shrubs in the parking lot. On November 25, 2008, the last of the landscape was completed, exactly one year and one month from her original contact with the City. On November 14, 2008, she received an email from Mr. Haas stating he had met with the owners and had gone over all issues discussed.
- In December the rear door was open on 7 different days, the last day being December 12, 2008. The rear door has remained closed since December 12, 2008. There have been no more after-hour parties, we still had issues with the overflow garbage until December 3, 2008 when it was finally picked up. They now have a small dumpster which is picked up on a weekly basis by Richmond Sanitary. There still is no trash receptacle in the parking lot and Condition 7 states, "The proprietor/owner shall provide a trash receptacle in the parking lot."
- The sign for Condition 23 has still not been posted in the back parking lot. She was not sure why other signs have not been installed but more than enough time has passed to install them.
- Regarding landscaping, she stated they are not impressed.
- When the first restaurant opened in January 2007, they were not in compliance. The establishment is still not in compliance. Overall, this has been an extremely frustrating and time-consuming effort. If Mr. Smith had fulfilled his obligations to begin with, she would not be here now. In closing, she asked the Commission to schedule a revocation hearing on the matter, based on Finding 2 of RMC 15.04.990.030; "A term or one or more of the conditions of approval of the permit or variance has been violated or relevant other laws or regulations have been violated."

Ms. Fletes said she also wanted to correct a statement of Ms. Renfro; she has one copy of the police report made for the after-hours party on October 18, 2008. She disagreed with the statement that they may have seen the back door open due to cleaning at night, as she had still seen patrons exiting and entering the back door prior to December 12<sup>th</sup>.

Chair Finlay asked Ms. Fletes to distribute a copy of the police report to staff.

Vice Chair Rao asked if Ms. Fletes knows of any neighborhood council's awareness of the problems. Ms. Fletes said at one time when the revocation hearing was scheduled in July, they had received a notice, but once it was postponed and dismissed, she was not sure an update was provided to them.

Gina Swirsding, Richmond Heights Neighborhood Council Official, said she has known the business to cause police actions, especially when Alvarado Bar and Grill was operating. She also verified not receiving any notices or correspondence from the City. Not mentioned also is an additional complaint that there has been a blue tarp on the roof of the restaurant since the business established, and many residents question why this is not being fixed. When the wind blows it off, it is again replaced.

Ray Smith, property owner, apologized for not getting the landscaping and sidewalk repaired timely which was due to financial constraints of the business. Regarding Ms. Renfro's report, they have completed all requirements of the CUP except for the signage. A permit was pulled, the sign installer is present this evening, and the sign will be installed by the end of next week. He received a citation on the property, met with Inspector Munjia, and at issue was a lighted sign. He checked the lot with the inspector, both saw the lights on and off, and agreed it was caused from the building across the street and not from his building. He felt his building was a target, acknowledged the delay in having the landscaping but said he installed more than what was called for, added more trees, and if dissatisfied still he would be happy to add more. He wants to be a good business neighbor, sees nothing but vacancies along San Pablo Avenue, and he asked that the matter not be set for revocation and said he would be more than happy to add more landscaping.

Chair Finlay questioned timing of the permit approval and opening of the restaurant. Mr. Smith he received his CUP permit in August 2006, but did not open a restaurant until January 2007. She noted that a CUP is nullified if it is not in use for six months. Ms. Renfro said a CUP runs with the land and the City must actively take it away through the revocation procedure. There must be a public hearing to determine whether the grounds exist to take it away. Chair Finlay questioned if there was a legal CUP at all since, according to the staff report, it was issued in August of 2005 and no restaurant existed or operated there until 2007. Ms. Renfro said yes, the CUP continues to exist unless it is taken away. There are many CUPs in the City where the potential for the use is in existence, but the business is not yet there. She said examples included the Ford Building and the Cannery Building.

Chair Finlay said her interpretation of this was very different. Ms. Privat said there are certain CUP terms which state expressly that if no action is taken on the permit within 6 months, then the right is lost. This is specific to some CUP approvals; however, he was not sure this was the case in this particular approval. Chair Finlay questioned what triggered this, and Mr. Privat said it would be the actual CUP granted at the time. It does not go into all resolutions and all CUPs. Chair Finlay asked for an explanation to better understand the distinction. Mr. Privat said staff would have to go back to 2006 and understand what was done. Ms. Renfro said it has become a new standard condition that has been added some time since 2005 when Ms. Battle was the

acting Director at the time the CUP was brought forward. She did not add it into the conditions of approval. The new condition still states, "Pursuant to Section 15.04.900 of the Richmond Zoning Ordinance, a conditional use permit may be revoked pursuant to the procedures set forward if it is not acted upon within six months." It does not automatically expire. Even after that 6 month period, it still needs to go through this process to determine whether there is evidence to hold a revocation hearing.

Vice Chair Rao questioned Mr. Smith about the 5 or 6 parking lot parties. Mr. Smith said he was not aware of any parties in the parking lot.

Vice Chair Rao questioned hours of operation, and Mr. Smith deferred the question to his business partner.

Vice Chair Rao questioned the purpose of the blue tarp on the roof. Mr. Smith said there is a roof leak that needs repair. Regarding the garbage, people at times dump garbage at the business, and his company had to almost routinely pick up trash.

Vice Chair Rao questioned whether Mr. Smith heard complaints of noise disturbances, and Mr. Smith said this was brought up by Ms. Renfro.

#### Public Comments:

Lisa Nichole Reyes, said she is against the revocation of the permit, believed the old reputation has followed the new owner, said she has been next door 10 years, has worked at the restaurant, has been there up until 2:00 a.m., feels safe in the area, said they have maintained the business, abided by all laws, agreed there are people who go there and sleep in the parking lot and also who have dumped garbage there, which has been cleaned up. She is in a wheelchair and needs access to the back of the building but accesses the front of the business, said there is very little parking they have had to deal with. They also share the lot with the grocery store on the corner and their customers leave a lot of litter and problems. Regarding noise, employees are gone by 11:00 p.m., she acknowledged there are people cleaning after 10:00 p.m. and this was the only time the back door is open.

Vice Chair Rao questioned and confirmed Ms. Reyes was not being compensated for her statements being made this evening.

Chair Finlay questioned what services was she performing until 2:00 a.m. Ms. Reyes said they have a print shop next door and they work late. They cannot accomplish work during the day when customers are in and out, and they work late hours. She said the parking lot has been safe, as their parking lot is next door. She confirmed that the parking lots are somewhat adjoined and she enters and exits the print shop business from the back door.

DeWanda Joseph, said she frequently goes down by the business and drives by the area frequently in the evenings coming from her overnight shift work. She does not notice parties in the parking lot, agreed that in the past there were many negative activities occurring, and acknowledged there may be trash dropped off by people. Since the restaurant's new ownership, it is clean, the establishment is non-smoking, there are not many people smoking in front, there is not a lot of noise outside or inside, the owners are conscientious about music being kept low inside, there are never overflows of people, or the need to escort intoxicated people off of the premises.

Laura Nutley, owner of Pit Boss Barbecue, said it has taken some time to get things in order such as garbage and landscaping. She agreed most of it had to do with financial constraints. The sign will be ready to be installed this week. Neighbors have been positive, many are regular customers, and the North and East Neighborhood Council have been wonderful and supportive. Regarding those neighbors who have problems, she contacts them and tries to understand their point of view. Regarding 5 parties, October 19<sup>th</sup> the police were called and there was a fight behind the building in the parking lot on Wilson across the street. A gunshot was heard and 12 police cars were there that evening which had nothing to do with her establishment. The rear doors are only open for deliveries and for employees to enter and leave and any repair personnel. She said three employees work there that live in Richmond, she would like to keep the business running, people come in with their families for dinner and drinks, and they are closed by 11:00 p.m.

Commissioner Duncan said the police reports speak specifically about the officer addressing the Manager in the restaurant at the time. The source of the noise was a DJ, which is specifically prohibited by the CUP. The report read, "I don't know how this happened—it got out of hand." Ms. Nutley said she was not at the restaurant that evening, but her husband was. She said they close early on Sundays at 8:00 p.m. There was a man who came in who wanted to have an after-hours party without alcohol for his niece and who agreed would be gone by 11:00 p.m. She said her husband actually called the police because the people came in and seemed to "hijack" the restaurant. They came in with DJ's, about 80 young people, they would not leave, and the police were called.

Adair C. Layne said he was Ms. Nutley's husband and he runs the kitchen. He has been at the restaurant from opening to closing almost everyday, acknowledged there have been problems with scavengers going through the garbage which has been made to be under control. The sign was a financial issue and confusion about who was responsible. He agreed they had sort of a hijacking by the relatives of a 16 year old; police were called and the place was cleared out immediately. Regarding after night parties, there have never been any after-hour parties late at night. Regarding people talking loud in the parking lot, the two employees who work late are young girls who leave immediately. They discourage people loitering in the parking lot, there was previous drug problems, acknowledged people used to drive by and have in the past dumped garbage and all of this has stopped. He said the back door is used for taking out mats to be cleaned, and they run a clean business.

Chair Finlay asked about the back door's use. Mr. Layne said employees use the back door for taking trash out, cleaning, and in the past they had problems with people catching the door before it is closed, but this has stopped and they do not allow people through the back door. All complaints are coming from one person who constantly calls the police.

Commissioner Duncan questioned if the back door was used for disabled access. Mr. Layne said they do have a ramp, some elderly people have asked to use it and they are directed to the front, and some women do not want to walk around the building after dark, but it is used for ADA access.

Chair Finlay noted that there is ADA access in the front, but Mr. Layne agreed but said they would have to negotiate with some difficulty in getting around from the back.

Darrel W. Roby, San Pablo, said he owns Comp Printing, has been there 16 years, knows of the previous establishment's problems of about 8 years ago, said there was a business called Bobbie's Back Door Barbecue and many times he has seen people come to the back door,

realize they cannot get in and they get back into their car and leave, which is lost revenue to the restaurant. He said over the years, he has had to call the restaurant to tell them someone has turned over their trash bins outside on a Sunday night and they are closed on Mondays. He has heard and seen Mr. Layne go outside and chase down people, said he saw someone put a cut up couch in the parking lot, which had to be removed. He said the business is completely different than what it was before, said there is no pool table, it is clean, said he has seen the back door open for employees to take out trash or receive deliveries, and he feels they have done a good job.

Peter Haas, attorney, believed that grounds do not exist to schedule a revocation hearing. All information before staff and the Commission involve two issues; the sign has not been completed and neighbors do not like landscaping; however, he believed landscaping meets with plans. In August and September, he held discussions with Mr. Renfro, discussed numerous issues neighbors had, set up a meeting with Ms. Fletes and Mr. Scott Littlehale who had a list of complaints. The owners immediately began working on the complaints, which has taken a long time, but everything is almost completed. About 20 speakers came in 2005 to oppose the CUP, complaints ranged from drunken brawls and drug dealing, and none of this exists today. There was one police report which was discussed where the owners called the police to get a group removed from the premises. He said every single phone call made to the police is from Ms. Fletes and out of all of the calls, there has been no report prepared by the police. This means they found nothing wrong. The evidence tonight is from one person complaining. Ms Renfro has stated she has gone by 5-6 times and has found no problems. Therefore, one person is creating a problem for the business which could mean another vacant property, which is a draconian result from what has happened. Staff has spent a lot of time, has done a great job, it has not been easy, and he believes they have accomplished the goals.

Chair Finlay questioned and confirmed Ms. Harbin has seen the landscaping and the landscaping conforms to the plans approved. Ms. Harbin said it was possible that some of the plants have died due to unusual weather conditions. They have irrigation in and working, and the owners will need to replace any dead plants.

#### *Rebuttal - Proponents*

Virginia Fletes said the garbage referred to is not the garbage being dumped by others, but that which belongs to the restaurant and is in brown bags. She said she called the police on February 17<sup>th</sup> because one of her neighbors had contacted her and told her about the after-hours party where people started lining up in the parking lot before 10:00 p.m. There have been no more after hour parties, and she said they were not in the parking lot but inside the establishment. On October 16<sup>th</sup> at 11:45 p.m., the parking lot was full of cars and on San Pablo Avenue where an after-hours party was held. The restaurant staff was not cleaning up and at approximately 12:10-12:15 a.m., she contacted police and documented everything she observed. On the night of October 19<sup>th</sup> at midnight, there was a fight in the parking lot due to an after-hours party. It started from people in the bar. The neighbor across the street went to help a guy who was beaten up and lying in the parking lot.

Vice Chair Rao said the hours of operation are from 6:00 a.m. to 10:00 p.m. He questioned whether they close after 10:00 p.m. Ms. Fletes said starting in December, customers are out of the building by 11:00 p.m.

Vice Chair Rao questioned and confirmed Ms. Fletes has not seen people drinking in the parking lot.

Vice Chair Rao questioned Ms. Fletes' complaint about noise in the parking lot and people sleeping. Ms. Fletes said people do bring their cars to the parking lot and sleep in their cars, and there is one person who regularly sleeps there 3 nights a week, but it has nothing to do with the business. However, she has experienced problems with noise due to people hanging out in the parking lot, and she called the police.

Vice Chair Rao questioned the amount of time the back door has not been locked. Ms. Fletes said she does not count the times the employees and owner goes in and out. She has documentation of the days and times where she and neighbors have observed that the back door has been unlocked and patrons going in and out of the restaurant.

Vice Chair Rao questioned if Ms. Fletes has been to the restaurant, and Ms Fletes said she has not since the new owners have operated it.

#### *Rebuttal – Opponents*

Peter Haas, Orinda resident, Attorney for opponent, said staff has done a great job with compliance issues, did not believe the revocation should be scheduled, the business employs Richmond residents, there are many vacancies along San Pablo Avenue, and he believes evidence has shown there are no operational problems.

Vice Chair Rao referred to Condition 30; the back door. He questioned if Mr. Haas has gone through the back door or was familiar with it. Mr. Haas said he is aware of the back door but has never gone through it. Vice Chair Rao questioned whether or not the door was equipped with an automatic locking device. Mr. Haas verified with Mr. Layne that it did.

Ms. Renfro gave staff's summation, stating that if, based upon the reasonable assumptions predicated upon the facts, and expert opinions supported by the facts, the Planning Commission finds that there may be evidence to either revoke or modify the CUP, the Commission can schedule a hearing for examination of evidence within 10 days. She could not weigh or comment upon whether or not there was adequate evidence. A suggestion that she has heard come up is the fact that the parking lot is not fenced and possibly could be appropriate.

Vice Chair Rao confirmed with Ms. Renfro that the last time she visited the property was last December 2008. She noted that in October, the parking lot took a long time to be finished, construction debris got removed, the sign on the back door clearly indicates to patrons to use the front door, the door has been locked, and she has been inside the business. She confirmed that when landscaping was first installed and the weather was dry, she visited the property. However, she has not checked whether there were any dead plants since its initial installation.

Commissioner Duncan said he finds there is no evidence to schedule or modify the CUP, and Commissioners Williams and Rao agreed.

Chair Finlay said she was on the Planning Commission when the application came before her in 2005 and agreed there have been years of bad feelings generated as a result of businesses operating at the location. When the Commission agreed to approve the CUP, it did so with the understanding that a new owner should not be burdened by the sins of past owners. Also, because of the configuration of the parking lot, the residential community had suffered for years because of past bad management practices. Consequently, some things to try and mitigate the problems at the parking lot was a very aggressive landscape plan, to buffer some of the noise,

signage, keeping premises clean in the back, the requirement for a garbage receptacle, and Mr. Smith had allowed construction to occur in the buildings without getting proper permits. She said Mr. Smith is a licensed real estate broker, owns multiple businesses and understands the obligations that businesses have. The CUP does not state “when you get around to adhering to conditions” but rather that part of your ability to operate a business, you will do the following. In the last three and one half years, until revocation has been threatened, Mr. Smith has chosen not to comply with some of the requirements of the CUP and she has no tolerance or patience for the owners and proprietors not being good neighbors. She noted the business has cost the City to bring the landlord into compliance; however, signs are still not up three and a half years later.

Legally, she questioned whether there were enough grounds for revocation, and unfortunately, she did not believe there was. She noted that she will start driving by the establishment, noted that the landscaping is a danger because it was not finished, and she will now check the CUP conditions.

The public hearing was closed.

**ACTION: It was M/S (Duncan/Rao) that there is insufficient evidence that would warrant the scheduling of a revocation hearing. Vote: 4-1-0-1 (Finlay voted no; Lee abstained).**

Secretary Lee returned to the dais and participated in the remainder of the meeting.

**4. PLN08-065 – The Plug Tattoo & Piercing Conditional Use Permit, 12590 San Pablo Avenue** - PUBLIC HEARING to consider a Conditional Use Permit to allow tattoo and body piercing services and the sale of tobacco products at 12590 San Pablo Avenue (APN: 523-051-019). C-2, General Commercial Zoning District. Allen Burriesci, owner; Sal Salman, applicant. Planner: Hector Rojas. Tentative Recommendation: Conditional Approval.

Mr. Hector Rojas gave a brief description of the request for approval of a conditional use permit, type and hours of operations, zoning, previous use, said the nearest similar business; Nunez Tattoos, is located at 12724 San Pablo Avenue, or 1.5 blocks north of the subject site, there are no parks or churches located within 1,000 feet of the site, and the nearest school is approximately 770 feet south of the site. Staff reviewed specifically the stereotype that follows with such an establishment and made clear to the applicant was that staff did not want to see abundance of signage. The applicant also operates another establishment in Oakland which is a high quality location, with no signage clutter or sales of paraphernalia. There are 52 conditions of approval in the resolution and the applicant has embraced all conditions without objection. A condition requires the applicant stripe the parking area, thereby reducing parking on site. Parking will include one ADA space and 3 regular parking spaces. Both sides of the area along Solano Avenue between San Pablo and McLaughlin Streets have ample on-site parking. He also discussed the request with the Code Enforcement Division who has indicated there have been no complaints from the Nunez Tattoo business from the surrounding neighborhood. Conditions also include Alameda County’s newly created conditions for such establishments, which have to do with sterilization of needles, health and safety requirements, age restrictions, and the applicant agrees with all conditions.

Vice Chair Rao questioned how many employees will do tattooing and body piercing. Mr. Rojas said there will be four stations and he was not sure if it will be a total of 4 people or whether they will be on a rotational basis.

Vice Chair Rao referred to the County's requirements, but questioned if there were State regulations for those performing tattoos and piercings. Mr. Rojas said different agencies are creating standards on their own because there is a lack of State response. Mr. Rojas said there is nothing in the City's municipal code about body piercings or tattoos, except for basic CUP requirements.

## **BREAK**

Chair Finlay called for a brief break at 9:25 p.m. and reconvened the meeting at 9:30 p.m.

Sal Salman, Rodeo resident and Applicant, briefly discussed his family's business history since the 1960's, described his desire to open a tattoo and piercing parlor with apparel and tobacco sales. He said generally people have a biker image, said they want to establish the parlor as a boutique style and high end cigar store business and noted that the rear of the business would be used for tattoos and piercing. They are trying to set high standards for how their business operates, said they chose the location because of its ability to be clutter free while having appropriate retail merchandise to succeed. They have another location on East 12<sup>th</sup> Street in Oakland and said they have helped the City of Oakland set standards for the business.

Vice Chair Rao said there are many establishments in the area and he questioned if other businesses naturally have tobacco sales as part of their business. Mr. Salman said no, but their establishment will bring several components to be synergetic. In Berkeley, there are clothing stores with tattoos/body piercings, but their standards far exceed those establishments. Three businesses have been trend-setters—tattoos and body piercings, cigars and tobacco shops, and apparel. The location is 3,500 square feet and they want to utilize services that will generate a profit and serve the community.

Vice Chair Rao questioned how Mr. Salman would ensure teenagers would not be tattooed. Mr. Salman said it is illegal to tattoo under the age of 18, even with a guardian. They have an application process which also requires identification and as an added resource, their establishments also have 24-hour surveillance tapes kept for up to 3 years which can identify customers.

## Public Comments:

Janet Conery said Mr. Salman and Mr. Rojas have answered some of her concerns, but questioned how the business might affect housing values due to the stigma attached to it. She said there are three tattoo parlors in the area and she questioned how the business will serve the greater good of the neighborhood. The corner where the business will be located is a major thoroughfare for children going to and from school, noted tobacco products often come with paraphernalia relating to drug use, she questioned who Mr. Salman's clients are, voiced concern with gang members who also might want to be tattooed for affiliation, and questioned how the storefront would be improved and whether it will be maintained in a clean and untagged manner.

James Pan distributed the 2009 Yellow Pages list of tattoo parlors in the Richmond area and a location map of the two parlors which are within a half mile radius and one about a block away. He said he is not against new business but voiced concern that the neighborhood would not be served by another parlor but rather better served by another business such as a book store or grocery. He agreed the corner was heavily traveled by students daily, said students hang out at the opposite corner and voiced concern that they would be attracted to it.

Secretary Lee questioned if Mr. Pan was comfortable with signage restrictions, and Mr. Pan said the CUP is thorough and he is not against conditions; however, their objection is the overall negative image that society places on tattoo parlors and impacts to the neighborhood.

Vice Chair Rao confirmed Mr. Pan lives 3 blocks from a tattoo parlor, that he and nearby neighbors are impacted by it, and said during all hours of the day and night clients who visit the parlors are bikers with loud mufflers.

Gina Swirsding said she passes the nearby tattoo parlor all the time, feels very comfortable with those inside the business, agrees with residents that many kids who pass by the corner graffiti buildings and she believes it would provide them with the opportunity to mark more. Her biggest concern is tobacco sales, as there are nearby liquor stores with tobacco sales who attract children, said police have also conducted a sting on some stores where owners have sold alcohol to youth, and suggested another type of business.

*Rebuttal – Applicant*

Sal Salman, Rodeo, Applicant, said many concerns are those anticipated and discussed with City staff. He said he owns several pieces of property in the City as well as many properties in Alameda and Contra Costa counties, said he does not feel the establishment will affect property values, said the shop will be more of a boutique, there will be no signs that say tattoos and piercings, but is proposed to say, “The Plug.” Regarding nearby parlors, competition is good and they are looking to set a high standard which he felt serves the community. There are no alcoholic beverages on site nor is there candy or soda.

*Rebuttal – Opponent*

None was given by any opponent.

Mr. Rojas gave a staff summation, stating there are not many standards or conditions in the zoning code to indicate that the project actually meets requirements. The project does meet the parking requirement in the zoning code. In addition, the applicant has agreed to all conditions of approval, and staff feels they thoroughly cover any associated impacts of the project, and recommend that the Planning Commission adopt the resolution in Attachment 1, approving the CUP subject to the project plans in Exhibit A.

Vice Chair Rao said regardless of no zoning standards, he said he would personally not like to see tobacco sales sold in the same place as tattoos and piercings are taking place.

Commissioner Duncan said the applicant is attempting to raise the Commissioners’ impression of tattoos/piercings to a higher level. As a business move, it is interesting. He read that during the depression of the 1930’s businesses that survived included sales of alcohol, cosmetics and entertainment. He questioned whether because of the current climate, the combination of such sales would be sustainable. He is impressed with the fact that the applicant is working with the City of Oakland to develop standards where there are none, which is commendable, and he supported approval of the application.

Secretary Lee said he was impressed that Mr. Rojas visited the Oakland store, placed mutually agreed upon signage restrictions on the application, and he trusts that it will not look like a tattoo parlor. Based upon this, he supported the application.

Chair Finlay said as an aside, she is amazed that the State of California and other states will license cosmetologists, acupuncturists, but do not license those who tattoo and pierce. Based upon the last application regarding the revocation hearing, she questioned if Mr. Privat had any items which he felt might tighten up the conditions for the CUP.

Mr. Privat questioned and confirmed this would include the CUP's expiration. Mr. Privat said the Commission can add a condition for the permit to expire if the applicant fails to commence construction within a certain time. Chair Finlay suggested for operation to be the limiting factor. Mr. Privat said the City does not want land tied up when the applicant has a no-faith intent to commence upon the proposed use. Therefore, there is not a distinction between construction and operation and the term "operation" could be used.

Chair Finlay suggested Mr. Privat conduct more research, work with Mr. Rojas and arrive at one or two CUP conditions that will address these kinds of issues, which will lead to a future, automatic condition. Mr. Privat agreed, and said if the applicant were to get their permit, begin construction, the City then gets into vested rights would lend against the ability to have the permit expire if they do not operate. However, staff will research the matter and propose new conditions.

Chair Finlay questioned if the same condition was contained in this CUP she was looking for in the last one, and confirmed it was Condition 57 which addresses the right to revoke versus automatic expiration. Mr. Privat said the section referenced here is Section 15.04.910.070(e). Therefore, any motion made would require a change to that specific section or to provide staff the authority to revise the resolution.

Chair Finlay said in reading the standard language, she understands the confusion about having to perform a revocation hearing versus having a CUP revoked.

The public hearing was closed.

<p><b>ACTION: It was M/S (Duncan/Williams) to approve Resolution 09-01; Conditional Use Permit for a tattoo and body piercing establishment with tobacco sales, called The Plug Tattoo and Piercing, Inc., at 12590 San Pablo Avenue; PLN08-065, with the findings and 57 conditions; and to amend Condition 57 to read, "pursuant to Section 15.04.910". Vote: 4-1 (Rao voted no).</b></p>
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## **COMMISSION BUSINESS**

Vice Chair Rao questioned the status of the combined Planning Commission/Design Review Board.

Ms. Harbin reported that at the last Council meeting, Councilmember Butt presented a resolution, said there were certain items similar to actions contained in the proposed ordinance. Staff plans to return to the City Council with the ordinance on February 17, 2009, separating the ordinance into different components so the Council can choose which items they want to enact and which items they did not want to address. Additional staff meetings will need to occur prior to finalizing the draft ordinance.

Chair Finlay said it was her recollection that the resolution prepared by Councilmember Butt was accepted by the Council. The first "Therefore, Be It Resolved" clause states continue operation of the Planning Commission and Design Review Board as separate bodies, but also continue to study opportunities to achieve efficiencies without sacrificing an effective level of project review and community participation in the process." It also states, "...and then consider forming a joint body made up of Planning Commissions and DRB members to process projects that require both design review and Planning Commission approval. Consider operating this as a pilot project for a finite period of time or for a finite number of projects to evaluate its effectiveness." She said there are also 1-6 policy directives; 6 having Items A-N for consideration.

Secretary Lee suggested that, as options are being put together, in talking with other city planning commissions and people on the LAFCO Board, they have an alternate that also sits through the meetings. He believed it would be nice to include an Alternate that could relieve some of the pressure for Commissioners and also could act as a convenient training platform for new Commissioners, and asked that staff also consider this option.

Secretary Lee reported that he would be attending a UC Davis Extension course on the Role of a Planning Commissioner on February 6, 2009.

Commissioner Williams asked what agenda items were scheduled for the February 5, 2009 Planning Commission meeting. Ms. Harbin said one item was carried over from tonight, staff planned to have the bio-fuels study session for a future draft ordinance, and a CUP request which relates to a request to open a pub and grill (Richard Lompa) in the Pt. Richmond area, in a building called The Point.

Chair Finlay reported that she and Commissioner Williams will attend the ABAG meeting on January 29, 2009 regarding Economic Forecast for 2009. She said one item on the City Council agenda was an amendment to Resolution 4807 that authorizes Board, Commission and Committee Members whose terms have expired but have not been re-appointed or replaced by a new appointee, to continue serving with their respective Board or Commission an additional 90 days. The amendment to the resolution indicates, "Be it Further Resolved that this 90-day period will begin upon passage of this resolution for any member whose term may have expired prior to the passage of this resolution." She confirmed the resolution would require one hearing, thereby effective last Tuesday. Operationally, she assumed that at any time during the 90-day period, the Council can reach an agreement to appoint someone. They will indicate the new appointee will take a certain seat, and that member would need to vacate his/her seat at the time of the appointment. Mr. Privat said he was not sure if this was the case, as there were empty seats to fill.

The Commission and staff discussed whether it was a resolution or ordinance, and Mr. Privat noted that 1707 was certified by the Clerk is an ordinance and is effective 30 days after the second reading.

## **8. Reports of Officers, Commissioners and Staff**

**Public Forum - None**

### **Adjournment**

The meeting was adjourned at 10:16 p.m.