

**PLANNING COMMISSION MEETING**  
**COUNCIL CHAMBERS, RICHMOND CITY HALL**  
1401 Marina Way South, Richmond, CA  
February 5, 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 7:14 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 (arrived at 7:56 p.m.)

**Absent:** None

**INTRODUCTIONS**

**Staff Present:** Kieron Slaughter, Jonelyn Whales, Hector Rojas, Joe Light, Janet Harbin and Carlos Privat

**MINUTES**

Chair Finlay referred to minutes, confirmed that changes made by Commissioners are made prior to their posting and finalization.

March 1, 2007

Chair Finlay had one minor correction which was provided to staff.

<b>ACTION: It was M/S (Rao/Lee) to accept the minutes of March 1, 2007; unanimously approved (Duncan abstained).</b>
--

April 19, 2007

Chair Finlay continued the minutes to be acted on at the end of the meeting.

April 26, 2007

Chair Finlay had one minor correction which was provided to staff.

**ACTION: It was M/S (Rao/Lee) to accept the minutes of April 26, 2007; unanimously approved (Duncan abstained).**

May 3, 2007

Chair Finlay had corrections to the minutes which were provided to staff.

**ACTION: It was M/S (Rao/Lee) to accept the minutes of May 2, 2007; unanimously approved (Duncan abstained).**

### **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 16, 2009, by 5:00 p.m. and announced the appeal process after each affected item.

Chair Finlay noted the Consent Calendar consisted of Items 3 and 4.

Ms. Harbin said there were corrections to the Resolution for Item 3. Chair Finlay requested removal of Item 3. She asked to place Item 2 on the Consent Calendar as it was to be held over to March 5, 2009. Commissioner Rao requested Item 4 be removed from the Consent Calendar.

**ACTION: It was M/S (Rao/Duncan) to adopt the Consent Calendar consisting of Item 2; unanimously approved.**

### **Items Approved:**

- 2. 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 3/5/2009.

**Brown Act – Public Forum – None**

### **Item Discussed:**

- 1. Study Session on Biofuel Ordinance** - STUDY SESSION on proposed Biofuel Ordinance: A proposal to add Sections to Chapter 15.04 of the Zoning regulations for refining, manufacturing, storage and distribution of Biofuels. Planner: Kieron Slaughter.

Kieron Slaughter said the study session is to be held to comment on the ordinance, and he provided a PowerPoint presentation on the proposed Biofuel Ordinance. He gave a brief history of the diesel engine, biodiesel's definition, what it is not, how it is made through a chemical reaction, a chart showing steps to make biodiesel, ratios of biodiesel blends, those involved in the biofuel industry, biodiesel production, capacity, biodiesel's largest customers, California

based retail distributors, a proposed biodiesel gas station in Berkeley, Solar Living Institute in Hopland, LC Biofuels, LLC in Richmond, larger, mid-west processing facilities and pictures of unregulated, home-based processing and distribution.

Regarding the ordinance, Mr. Slaughter outlined the staff report, said staff received numerous inquiries regarding biofuels, hence the need for an ordinance. Staff held a community meeting on September 8, 2008 where members of the public voiced concern with industrial uses near residential districts. They voiced concerns regarding safety, noise, lighting, traffic and incompatibility near residential properties. He referred to Attachment 1 which is the resolution and ordinance, and said staff proposes to group such facilities in M3 and M4 zone districts, along with provisions for buffers and mitigation to provide enough room. Mr. Slaughter noted that staff provided significant outreach and solicitation of the ordinance which he described and he welcomed questions of the Commission.

Vice Chair Rao referred to noise levels and Mr. Slaughter described potential industrial uses and noise and staff wanted to ensure issues were addressed and reviewed when plants are under review. Noise can be derived from large scale facilities to include trucks and plant equipment.

Chair Finlay questioned if individual users would be precluded from producing biofuels, and Mr. Slaughter said the way the ordinance is written, certain distances need to be adhered to due to the Fire Department's review which related to the storage of flammable liquids.

Chair Finlay said she reads that you can only have a processing plant in an M3 or M4 district, and Mr. Slaughter said they also add biofuel to petroleum stations which would fall under the same guidelines as gas dispensing facilities. They would have to be 500 feet away from certain uses such as schools, residential, playground, hospital or ambulatory care facility. Chair Finlay felt this would delete any gas station in the City unless it is in the heart of the industrial districts. Mr. Slaughter said if the Commission feels it should allow them closer to residential districts, it can be considered, but aesthetically, above ground tanks are located on the premises and they cannot be stored underground.

Chair Finlay recommended staff create something like what staff prepared when looking at the massage parlor ordinance, where we took a map of the city and did the overlays of all institutions to determine where an operation could be located. She could not determine if the language was too restrictive without such visual information. She said the Richmond's facility was delivering biofuel by tanker trucks to the railroad, and she did not understand where it fits into the ordinance. Mr. Slaughter said the application for the Richmond facility was approved under a CUP or an over-the-counter permit some time ago when biofuels was very new, and he was unaware of the restrictions to transport such materials. However, there are certain routes where flammable liquid is restricted. Chair Finlay suggested having the overlap map to better understand potential locations and transportation routes of tanker truck traffic.

Mr. Slaughter said staff also found in other locations that there may also be specific wet event locations where material is distributed; however, staff has not received any applications for this.

Commissioner Duncan said whatever criteria used for fueling stations should be the same used here and not have the 500 foot restrictions from schools, etc., as the City does not want to restrict service stations from carrying and selling biofuels. Also, he would not object to a dedicated station with an aboveground tank. The ordinance does not make the distinction between production and distribution and he felt restrictions are more appropriate to production.

If there is production on a commercial scale, it should probably be controlled like a refinery. Regarding the science of its creation, it is different than ethanol production, they look like multi-acre facilities, and he does not know if Richmond has the room for such production. But, as a biodiesel producer smaller in scale, he questioned what the BAAQMD and the CARB had to say about such producers. Mr. Slaughter said BAAQMD has not permits for such facilities and those contacted seemed to be the most relaxed in terms of biodiesel production. He said in a smaller application by a producer for a small distribution facility of 6, 30-gallon tanks to locate in the M2 district, a lot of feedback was received that it was too close to a residential district.

Commissioner Duncan suggested that possibly a driver for establishing a science behind the distances in production might be to determine what the pollution output is. He saw a figure of 1500 or 2000 square feet away from a medical facility. He said he did not see the potential for flaring but heating of the feedstock oil, and in terms of production, distances should be established based on some sort of criteria and some precedent for other municipalities.

Secretary Lee said biodiesel is one of the least volatile fuels and he cautioned staying real relative to the potential risk. He felt it was pretty hard to get biodiesel to blow up, and Mr. Slaughter said it did have a high flash point and this is the difficulty in formulating the ordinance—some people believe it is like cooking oil and others have voiced they do not want to be near the operation and consider it heavy use.

Secretary Lee questioned if the proposed ordinance was patterned on another municipality's ordinance such as in comparison to Berkeley's ordinance. Mr. Slaughter said Berkeley is working on their ordinance, but they have been very proactive in allowing the use and processing of biofuels. They put many conditions on a newly opened facility, they have a biofuels task force and he looked at the State of Washington who had a thorough permitting process and Mendocino. Planning staff feels the proposed ordinance is in line with what has been established, but there is room for flexibility and discussion.

Ms. Harbin said it is difficult to find ordinances that relate to biofuels, but staff has had so much interest in locating biofuel facilities in the city, staff wanted to move forward with an ordinance.

Mr. Slaughter said in terms of CEQA, Geo Green Biofuels did a negative declaration, went through some analysis and environmental review to determine impacts, so the science is not perfect yet.

Vice Chair Rao questioned if there has been any research as to what cities in the United States have had a history of production and use and what sort of impacts were seen. Mr. Slaughter said the majority of uses were in the mid-west, there are not too many in an urban area. It was hard to measure negative impacts based on the variety of feedback depending upon their point of view and interest.

#### Public Comments:

Kerry Benthall voiced concern with the concept that biofuels are benign and felt it was combustible. He said there are pros and cons across the country with the industry, there is a definite point of view on oil, we know what its impact is and we do not know what the business model is for production. When Berkeley and San Francisco considers their ordinance, they might be considering the distribution site of it and the holding tank rather than production. He voiced concern that as the Planning Commission looks at the industry, it is better to be safe and proceed cautiously and expand any ordinance as the business model is known rather than to

take a wait and see approach. He urged for inspection and rules which have not yet been developed, as well.

Joshua Genser, Richmond Chamber of Commerce, said the Chamber is opposed to the ordinance in principle and in practice, said it take biofuels and treats them more strictly than any other industrial application possible, including things that are demonstratively more dangerous and it makes it harder to locate to locate a biofuels facility in the City. He said under the current ordinance, anything having to do with combustible or flammable liquids, which includes biodiesel is only a conditional use in industrial areas. So the Planning Commission, when faced with an application, can impose any of the conditions that are included in the ordinance and make sense, and the ordinance contains many conditions and restrictions that do not make sense. He noted that the "home brewing" of biodiesel is unlawful in the City of Richmond and the existing ordinance is not carte blanche under any circumstances. The City has the authority and power to impose any reasonable conditions upon an application for such a facility in the City under the existing ordinance. He believed the ordinance's adoption was silly given there will be a brand new zoning ordinance after a general plan is adopted. The ordinance has some substantial flaws such as location restrictions. They are so restrictive and almost no areas in the City where it would be possible to put a biodiesel facility. He said there are many businesses with their own fleet facility tanks on site and if they wanted to convert them to biodiesel, they could not do it. Moreover, the ordinance contains a long list of conditions that are required to be met by anybody who wants to locate any kind of a facility, including an underground tank and those conditions include getting an above ground tank, a transportation permit, wastewater permit, and all kinds of permits that may not even apply to the business. He felt the ordinance was being done because of political fear, there is no science to it whatsoever and asked that the issue be left to the new zoning ordinance after the General Plan is adopted.

Katrinka Ruk, Council of Industries, echoed Mr. Genser's comments, asked the Commission to reject the ordinance, said currently biofuels production and storage would fall under the current conditional use permit structure which requires review by the Planning Commission and Fire Department. The problem with biofuels is combustibility and not flammability, which are an entirely different flashpoint and not the same issue. The ordinance goes above and beyond by requiring 8 separate permitting procedures which may or may not apply but still must be reviewed and processed. She noted that the City of San Francisco is putting in a biodiesel manufacturing site in the Ocean view area which is near residential and which will fuel City cars with it. She felt this would be a nice model for the planning group to look at.

Robert Jagunich, Palo Alto, said he has been trying to develop a biodiesel terminal in Richmond, said he has been involved with biodiesel since 2004, said it is a less dangerous liquid than any petroleum product or ethanol, it has a much higher flashpoint, is not flammable, and the only concern would be the storage of methane used to produce biofuel and amateurs working with it. Professionally run plants are very safe, he discussed the processing and recycling of grease and said the real potential in California is that it reduces carbon, NOX and pollution, it will support transportation, and said Richmond could support such an operation. He said there is some controversy in biodiesel in underground storage but this is related to the fact that state law requires tanks and particular uses must be certified, and he suggested any ordinance not be too restrictive and said they will only develop a sustainable terminal and only import biodiesel from the production stage.

Secretary Lee confirmed Mr. Jagunich was interested primarily in importing, distributing, storing and he confirmed he would import the material from various mid-west areas in the United States, India, and as an example, palm oil from Southeast Asia.

Vice Chair Rao thanked Mr. Jagunich for his interest in Richmond, and asked to expand on positives and negatives of current operations. Mr. Jagunich said there is such a demand in Europe that all production tends to flow from the United States there. The industry needs to be developed in the United States and the California Energy Commission is strongly behind it.

Commissioner Duncan referred to the lengthy process of the Chevron expansion, and he said he was unfamiliar with biofuel production and asked to make a clear distinction from selling it on the street and producing it industrially. He questioned what the produced bi-products are, and Mr. Jagunich said glycerin, left over methanol, disposal of materials from boilers, and all products are contained and are not the same as a refinery.

Vice Chair Rao said he believes Mr. Jagunich and Mr. Genser made good comments, thinks those principles should be included in the ordinance and those considered repetitive and useless removed from the ordinance. He did not believe the City should make it difficult for industries to operate.

Secretary Lee said it seems like in the first draft of the ordinance, too much is lumped into one document. He said believed there are those who have already thought through the process and encouraged staff to do more research on the matter.

Mr. Slaughter referred to Section 1, Definitions, and said staff was sensitive to the fact that people would want to add biodiesel to service stations and included biofuel under automobile service station definitions, so they would be exempt from certain criteria. Secondly, regarding the number of permits, the State of Washington has 3-4 pages of conditions, beginning with local, state and federal agencies and staff does not believe the number of conditions were necessarily excessive or onerous. In addition, if users have a tank underground, he questioned why they would need one above ground. The City approves the use of biodiesel and underground storage tanks and this is why a permit would be needed for above ground storage. Mr. Slaughter noted that Mr. Genser was involved with almost every meeting over the last 9 months, was quite aware of the ordinance, and staff gave him ample opportunity to comment on the matter, as well as others.

Chair Finlay said because the words were added, "including biofuel" under the definition of automobile service station, this pre-empts it from the language in the ordinance regarding biofuel storage, distribution and refining. Assistant City Attorney Carlos Privat said the ordinance was reviewed by Assistant City Attorney Mary Renfro, he is not aware of a specific exemption other than the statement made by Mr. Slaughter which he accepts.

Chair Finlay said she did not interpret it the way Mr. Slaughter did, and Mr. Slaughter suggested additional clarification that states it is exempt from service station regulations.

Commissioner Williams noted he did not hear the entire presentation and agreed there was some work that needs to be done and supported continued research.

Commissioner Duncan said he thinks the ordinance should make a broader extension between just distribution and industrial production because those are two radically different things. He also finds it hard to believe that there are not controls in place in the existing ordinance that covers a large refinery of that scale but wouldn't automatically apply here to what appears to be a less volatile product. Mr. Slaughter agreed, but people wanted to define biodiesel to suit their use; they would squeeze in between some of the hazardous material levels that did not have

the same requirements that a large scale refinery would and this was the reason staff wanted to add as much language, to define the uses.

Commissioner Duncan agreed that diesel is one of the most polluting fuels around, large trucks are the culprit and he would add language that allows trucking operators who have on-site facilities with tanks, to allow them to switch to biodiesel and not restrict them. Mr. Slaughter felt this was a good point and he agreed to take note of this.

Chair Finlay referred to Section 4, Biodiesel Facilities, Storage and Distribution. Item 1-5, and said a map is needed and suggested that pictures of the Richmond facility there be shown. She then referred to 1b through j, said there are many different permitting agencies. She thinks the words, "if applicable" should be added. Alternatively, a phrase could be inserted that asks that the applicant to "obtain permits from all required agencies" or "from these agencies but not limited to..." She believed as AB 32 is implemented, there may be new regulatory agencies in place.

Under 1f, it states, "from the local Fire Marshal ~~of~~ or State Fire Marshal". Under m, "oil and grease shall not be accumulated speculatively." She was not sure what this meant and asked to set a boundary, as it is too open.

Under n.4., "odors are controlled and do not cause a nuisance to neighboring properties." She said venting might be needed and suggested such an open-ended sentence be deleted.

Under q, "...obtaining a state prevention control....plan ~~with~~ from the Environmental protection Agency."

Under Refining and Manufacturing, most of it is a duplicate seen under Storage and Distribution; however, we go from A to C and B got left out, which should be corrected, as well as other references.

Under G, Fire Code Permit, "...from the local Fire Marshal" but not added in is the same verbiage which states, "or the State Fire Marshal" and asked that it be added.

Under J, "the permitted shall have paid a solid waste permit from the Contra Costa Health Services Department of Environmental Health" and she believed this clause should also be listed under Storage and Distribution. Mr. Slaughter said staff is led to believe there would not be any solid waste if they were transferring from one to the other, but if applicable, it could be added.

Attachment 2, Chair Finlay asked that any changes suggested should be moved to Attachment 2. She said she did not understand that with standard conditions of approval, there are two new conditions included as w and x, which are not included in the ordinance. Mr. Slaughter apologized for the oversight and said w and x should be added to the ordinance.

**3. PLN08-044 – Richard Lompa, Up and Under Pub and Grill on W. Richmond Avenue - PUBLIC HEARING** to consider a proposal for a Conditional Use Permit to establish an eating establishment with an Alcoholic Beverage Control Off-Sale License, Type 47 for the building located at 2 W Richmond Ave. (APN: 558-122-020), C-1, Neighborhood Commercial Zoning District. Richard Lompa, owner/applicant. Planner: Jonelyn Whales. Tentative Recommendation: Conditional Approval

Commissioner Duncan recused himself from participating on the item because of his residential proximity.

Chair Finlay described the public hearing protocols, asked for a staff introduction of the item and confirmed there were three speakers.

Jonelyn Whales gave the staff report and first noted typographical errors in the staff report: page 1, second paragraph, "off-sale" should be changed to "on-sale". In the resolution under condition number 2 should be changed from what was stated in the staff report regarding hours and operation on page 3 of the staff report--first paragraph; "7 days a week from 11AM to 12AM on Sundays through Thursdays including holidays, and on Friday and Saturday, from 11AM to 2AM." Chair Finlay said the condition in the resolution states "11AM to 11PM and 11AM to 1AM on Fridays and Saturdays." She confirmed with Ms. Whales that the staff report needs to change and not the resolution; Friday and Saturday should read as "1AM".

Ms. Whales said in addition, staff learned there were 8 on-sale licenses, although in the staff report there was mention of only 2 because some have a catering license which is a Type 58 and they were not included in her tally. Therefore, within the census tract, there were 8 on-sale licenses. Chair Finlay questioned if ABC's limit was 5 on-site licenses, and Ms. Whales said yes, however, this particular license already exists so therefore it is not a new license.

Ms. Whales said currently, there is currently a Type 48 license, or a bar, at the establishment; however, the applicant is applying for a restaurant which is a downsize from the Type 48 license.

Secretary Lee said the staff report states, "...as the operation of this use in the existing building has not been active for a few years, a CUP is now necessary to re-establish the dining and alcoholic beverage use." He said this gives the impression that the current alcohol permit would be expired, but Ms. Whales said it did not; even though the establishment was closed, the alcohol license was still active.

Chair Finlay opened the public hearing.

Nathan Trivers, Pt. Richmond, representing the Mr. Lompa, applicant, confirmed that the applicant has paid the annual ABC fee twice to keep the license current. He defined the words, Pride and Purpose, said the City operates under these two words, said the Up and Under establishment would be one of the first community-based pub and grill, said they would sponsor events to support local charities, each month they would have a guest chef, hold can food drives, develop a youth sports program, said the establishment would allow for networking and provide a warm, safe and friendly environment.

Vice Chair Rao questioned if presentations had been made to the local neighborhood council, and Mr. Trivers confirmed that the neighborhood council supports the operation. Vice Chair Rao questioned specifics of the restaurant, and Mr. Trivers described the type of food as a full service menu with a certain price point to support family patronage.

#### Public Comments:

Martin McNair questioned the staff report's page 4, use will not adversely affect adjacent nearby uses, questioned enforcement, noted there is no off-street parking requirement, said the

Gateway Foundation received a grant from MTC to create 6 parking spaces and landscaping, which was opposed by Mr. Lompa, but he hoped the establishment will succeed.

Courteney Coolidge, Richmond small business owner, said she lives across from the establishment and within 210 square feet, voiced concerns based on the previous business, said it was a very troublesome situation where people would be loud leaving at late hours where police needed to be called multiple times, and hoped it will not adversely affect nearby residents. She suggested the establishment close earlier, stating Hotel Mac closes 11PM or 12PM on weekends. She also questioned the establishment's bar relationship with the community service orientation, noting that she is a member of a local charity and believes it should close earlier if it were truly for families and community groups.

Richard Lompa, Applicant, said the only reason he bought the building was because he loved it, agreed the building and previous owner caused problems in the past, and noted that Mr. Trivers would operate the pub/restaurant business. He is excited with the proposed operation. It would not be a bar atmosphere, but one of a pub/restaurant setting with lots of energy and patronage. Regarding parking, there is no requirement at all because it is less than 5,000 square feet, and there is parking available on Railroad Avenue. He said the building has been used for the same purpose since 1912 but since it had been closed down for some time, re-application of the use permit must occur.

Chair Finlay questioned whether there would be musical entertainment or electronic gaming devices in the restaurant, and Mr. Trivers said there would be no music or electronic gaming devices.

Vice Chair Rao noted the ABC license is being downgraded from a Type 48 to Type 47 and Mr. Lompa clarified that a Type 48 is strictly liquor and no food and a Type 47 is liquor and food which is less disruptive. Vice Chair Rao questioned if Mr. Lompa thought about a pedestrian crossing over Railroad Avenue. Mr. Lompa briefly discussed Mr. McNair's comments about turning radiuses and bringing out curbs for more parking. He clarified there is a vacant field which could be used as a parking lot for the benefit of the Point.

Secretary Lee confirmed Mr. Lompa has owned the building for 1.5 years not knowing its condition. They cleaned up the building, replaced some wood windows upstairs and will be completely replacing all bottom elements of the building.

Vice Chair Rao said there is not much traffic after 11PM in the Pt. Richmond area and he questioned the establishment's hours. Mr. Lompa said there are places in Larkspur Landing and Kensington that are open very late and they will encourage an open and friendly atmosphere.

#### *Rebuttal – Applicant*

Nathan Trivers said no one likes a negative or loud atmosphere; he does not want to operate such a place and said he lives 300 feet from the place. He said he would agree to close at midnight for the community's benefit and agreed to work with the Commission with what they want.

#### *Rebuttal – Opponent*

Courteney Coolidge said she did not receive any notice in the mail about the proposal but found out about it through a friend, and suggested the City be more engaged with the public. For the last 10 years, the building was seedy, and hopes to see a nice, family atmosphere. Her and other residents' concerns center around the late hours of operation and food served and hoped the operation would be for families.

Vice Chair Rao referred to hours of operation and Ms. Coolidge said Hotel Mac's latest operation closes between 11PM and 12PM and regular nights at 10:30PM. She asked to keep in the mind that all of the operations are surrounded by residences with limited parking.

Ms. Whales gave staff's summation for recommendation and adoption of Attachment 1, granting approval of the CUP, subject to conditions of approval and project plans.

The public hearing was closed.

Chair Finlay asked the Commission to consider additional conditions and for staff to place them as appropriate; that alcoholic beverage sales shall be pursuant only to a Type 47 on-sale liquor license issued by ABC; that the operator shall keep all walkways in front of the building free of pedestrian obstruction at all times; the premises shall operate primarily as a bona fide eating place and must make actual and substantial sales of meals during the normal meal hours it is open at least 5 days a week; there shall be no live entertainment at the subject site; there shall be no electronic or coin operated amusement devices at the subject site; advertisement of alcoholic beverages shall be prohibited on all store front windows as well as any other surfaces that can be viewed from the public right-of-way; all noise disturbances as defined by Section 9.52 of the Richmond Municipal Code related to the use and occurring at the premises are prohibited; the operator is responsible for the removal of all graffiti from the walls of the building within 48 hours from its appearance on the property; authorization of a CUP granted pursuant to the provisions of Section 15.04.900 of the Richmond Zoning ordinance shall run with the and shall continue to be valid upon a change of ownership of the site or structure which was subject to the use permit application provided all provisions of the ordinance, zoning ordinance and all conditions placed on approval of the CUP are continually met; due to the property's location in a historic preservation district, this application must return to the Historic Preservation Advisory Committee (HPAC) Design Review Subcommittee for any and all interior or exterior additions, alterations, including painting or new construction.

Secretary Lee suggested an amendment to the last added condition, stating there was a well-written letter sent to the Commission from the HPAC and suggested, "the applicant must abide in full with all conditions and requirements as set forth in the February 4<sup>th</sup> letter to the Planning and Building Services Department from the HPAC Design Review Subcommittee" He said in the letter, there are two pertinent recommendations; 1) The Subcommittee recommends conditional approval of the CUP providing the applicant return to the Subcommittee with all proposed changes to the building's exterior and those changes as reviewed by the Design Review Board; and 2) the subcommittee recommends removal of the eagle statue from the roof of the building as it is in not in compliance with the statutes of the Secretary of Interior Standard.

Chair Finlay felt her language was more comprehensive regarding the interior of the building as well as the exterior, and Secretary Lee agreed.

Secretary Lee asked to add technical changes to conditions as stated in the staff report. On Condition 2, he asked to change hours of operation and it talks about any subsequent changes to hours of operation would be subject to review by the Zoning Administrator. He asked that this

be changed to the Planning Commission and Pt. Richmond Neighborhood Council. Chair Finlay said the neighborhood council is a recommending agency, and Secretary Lee suggested review by the neighborhood council and review and approval by the Planning Commission. Mr. Privat said they will have reviewed it anyway, and Secretary Lee agreed to simply limit it to review and approval by the Planning Commission.

Secretary Lee asked to change hours of operation to 10PM closure on Sunday through Thursday and 11PM closure on Fridays and Saturdays.

Secretary Lee asked to delete just the reference to a parking lot in condition 6, as there was no parking lot involved with the project at all.

Secretary Lee said the staff report states that the property has no off-street parking stalls for customer use; however, sufficient off-street parking is located across the street from the business on Railroad Avenue. He suggested that the problem with using that parking for this establishment is that there is no crosswalk from the corner to the property, and he asked that the applicant work with the City Engineer to provide and install a crosswalk from the building's corner across Railroad Avenue to the parking area because of the current dangerous situation. He said he felt it would be more elaborate than just paint, but he wanted there to be a marked crosswalk from the proposed parking area to the corner per the City standards.

Mr. Privat voiced concern with the proposed crosswalk condition as there is no guarantee that this is what the City wants to do with that site or has a wish to support installation of a crosswalk. He suggested a condition that suggested the applicant discuss the option with the City and come to some attempt to install a crosswalk, but not obligate it. Secretary Lee said this discussion has already occurred.

Secretary Lee asked to add a condition that states, the operation of this establishment must be in strict compliance with the rules and regulations of the ABC. Chair Finlay said this is part of their license, and Secretary Lee reiterated that he wanted it explicitly stated in the conditions.

Chair Finlay asked Commissioners if they wanted to re-open the public hearing due to staff's recommendation based on information it received from Mr. Lompa. Commissioner Williams made a motion and there was no second to re-open the public hearing.

Vice Chair Rao questioned if there was any rule on the signage for the bar, and Chair Finlay noted the conditions indicate that a separate sign permit approval shall be required for any new signage related to the proposed use. There is also information that states no more than 10% of the windows shall be covered or obstructed with signage, advertisements or other obstructions and another condition states that alcohol may not be advertised.

Vice Chair Rao asked for a friendly amendment to hours of operation, to be proposed as Sundays through Thursdays 11AM to 10PM and on Fridays and Saturdays; 11AM to midnight. Chair Finlay supported this change. Secretary Lee felt initially that in the beginning of the operation, he wanted to maintain the 11PM closure on Fridays and Saturdays.

Commissioner Williams felt that because it is a new business and we want it to succeed, he would love to be able to go somewhere after this meeting at 10:15PM or 10:30PM and still be able to get something to eat without having to go out of town. If hours become problematic, the subject could be revisited.

Secretary Lee suggested discussing this condition separately out of the motion, but after some discussion with Mr. Privat, Secretary Lee accepted the change to close at midnight and 10PM closure on weekdays.

**ACTION: It was M/S (Rao/Lee) to approve Attachment 1; PLN08-44, subject to conditions of approval and the project plans in Exhibit A, amendments proposed by the Planning Commission this evening.**

**Chair Finlay asked that Condition 2 read 11AM to 10PM Sundays through Thursdays and 11AM to midnight on Fridays and Saturdays. Condition 6 will delete the words "including the parking lot". Additional conditions will be attached to the use permit, as follows:**

**Alcoholic beverage sales shall be pursuant only to a Type 47 on-sale liquor license issued by ABC; that the operator shall keep all walkways in front of the building free of pedestrian obstruction at all times; the premises shall operate primarily as a bona fide eating place and must make actual and substantial sales of meals during the normal meal hours it is open at least 5 days a week; there shall be no live entertainment at the subject site; there shall be no electronic or coin-operated amusement devices at the subject site; advertisement of alcoholic beverages shall be prohibited on all store front windows as well as any other surface that can be viewed from the public right-of-way; all noise disturbances as defined by Section 9.52 of the Richmond Municipal Code related to the use and occurring at the premises are prohibited; the operator is responsible for the removal of all graffiti from the walls of the building within 48 hours of its appearance on the property; authorization of a CUP granted pursuant to the provisions of Section 15.04.900 of the Richmond Zoning ordinance shall run with the and shall continue to be valid upon a change of ownership of the site or structure which was subject to the use permit application provided all provisions of the ordinance, zoning ordinance and all conditions placed on approval of the CUP are continually met; due to the property's location in a Historic Preservation District, this application must return to the Historic Preservation Advisory Committee (HPAC) Design Review Subcommittee for any and all interior or exterior additions, alterations, including painting or new construction. Additionally, there must be strict compliance with all conditions as noted in the ABC license.**

Secretary Lee asked to include crosswalk language.

Vice Chair Rao asked staff to comment on what would be involved with the crosswalk issue, and Ms. Harbin said it would need to be analyzed by the Public Works Department. There are not any delineated crosswalks in the area presently. If delineated, some upgrades would most likely need to occur in the area because the roadway is not completely even. There has been traffic studies done that would suggest a crosswalk would give pedestrians a false sense of safety and they might get hit with the presence of crosswalks than without crosswalks.

Secretary Lee believed that from a family standpoint, it would be beneficial to have access from the parking area to across the street. Vice Chair Rao questioned the financial burden of requiring a crosswalk. Ms. Harbin did not know but it would cost the City something to implement it.

Chair Finlay questioned if language could be put into a condition that states that the crosswalk is contingent upon approval by the Public Works Department. Mr. Privat said he would be more comfortable with it and he questioned who would pay for it. Chair Finlay said it would be at the expense of the City, and she believed the property owner should not be burdened with the expense. Mr. Privat said the City could pursue it separately and not tie it to the project.

Secretary Lee felt that if the project has an impact on traffic and pedestrian access, he felt it was within the Commission's purview to require adding a crosswalk as a solution to the problem.

**Secretary Lee also asked that the reference to the Zoning Administrator under Condition 2 be changed to the Planning Commission. Vice Chair Rao accepted the final amendment to the original motion. VOTE: The motion carried unanimously.**

Commissioner Duncan returned to the dais to participate in the next agenda item.

- 4. PLN08-086 – Taki Sushi Conditional Use Permit, 10887-10889 San Pablo Avenue - PUBLIC HEARING** to consider a Conditional Use Permit to allow on-sale beer and wine sales at Taki Sushi, an existing restaurant located at 10887-10889 San Pablo Avenue (APN: 508-340-014). C-2 General Commercial District. F.C. Creative Inc., owner; Takikawa, applicant. Planner: Hector Rojas. Tentative Recommendation: Conditional Approval.

Vice Chair Rao said he removed the item from the Consent Calendar and asked if there was a police department report, the number of liquor stores in the area, and whether the neighborhood council supported the request. He questioned if there was a limit on the number of licenses sold by ABC. Mr. Rojas said there are limits by ABC; however, cities can find certain cases where there is public necessity and approve the finding. He said in this instance there is no over-concentration of licenses in the census tract.

Hector Rojas gave the staff report, briefly described the request for CUP to allow on-sale beer and wine sales of a Type 41 ABC license. He described the restaurant, hours of operation at 11:30AM to 9:30PM Tuesday through Sunday with no operation on Saturdays. Staff believes the proposed use is compatible with surrounding areas, and while there is no requirement for parking, the site has off-street parking and currently provides up to 5 parking spaces and additionally there is overflow parking along the north side. Conditions of approval in the resolution have been agreed upon by the applicant and he discussed prohibition of outside consumption of alcohol sales, limited hours of operation, prohibits live entertainment, and requires striping of the parking lot. He said staff questioned the police department who were forwarded the draft staff report with conditions and they indicated their agreement and support of the application. He copied Ms. Selva of the Richmond Annex Neighborhood Council and did not receive any comments in return.

The public hearing was opened, and there were no public speakers.

The public hearing was closed.

**ACTION: It was M/S (Lee/Rao) to adopt the resolution in Attachment 1 granting approval of the CUP; PLN08-086, with staff's findings, project plans in Exhibit A and conditions of approval; which carried unanimously.**

## **COMMISSION BUSINESS**

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

Ms. Harbin said the resolution distributed earlier had some changes and asked for feedback from the Commission. Mr. Privat suggested there was no need to review the resolution, as changes were ministerial in nature, conform to what the Commission requested staff do, and there was therefore no basis for review. If the Commission chose to review it, it should be agendized as such for the next meeting.

Chair Finlay apologized for any confusion, and said the Commission was going to accept the resolution as written and presented with minor corrections, and she asked Mr. Privat return to her with more specific, more easily understood language as to what constitutes revocation. She has reviewed the resolution and did not feel the need to agendize or discuss it further.

Mr. Rojas informed the Commission that the City Council held a meeting on Tuesday night regarding implementation of the City's Tobacco Retail License ordinance. They are not being enforced by the Police Department and the Council voted to make it a priority to enforce the ordinance on the existing retail uses and not issue additional tobacco retail licenses in the City. Although the Commission approved an application, the applicant cannot obtain the license from the police department and that aspect of the business cannot be allowed.

Chair Finlay said unless the Planning Commission's decision is appealed, it stands effective as of the day the decision was made. Therefore, any subsequent action by the City Council would not be retroactive to a CUP that has gone through the process. Mr. Privat agreed that the application was approved by the Planning Commission; however, the applicant does not have a vested right until the applicant starts doing something to move forward on the application. The Council can change the rules and the question is whether the applicant has done enough to invoke those protections.

Chair Finlay believed this brings up a broader issue; the question came up during discussion of the green building ordinance. Once an application has been accepted, the drop dead date stops there and a new guideline does not necessarily change it, and she felt the issue was fraught with problems. She suggested it be looked at further.

Mr. Privat said the Tobacco Retailers' License ordinance of the City requires a license of every tobacco retailer in the City, which is a condition in addition to a CUP requirement for this specific application. Therefore, the license may not be granted based upon the direction from the City Council. The CUP was just to entertain the land use proposal there and they would have still had to obtain a Tobacco Retailers License. And, the Council decided not to issue those licenses anymore because there was more of a priority for enforcing the existing ordinance on existing retailers.

Chair Finlay suggested the minutes of April 19, 2007 be addressed.

**MINUTES** (Continued)...

April 19, 2007

**ACTION: It was M/S (Rao/Lee) to accept the minutes of April 19, 2007; unanimously approved (Duncan abstained).**

Secretary Lee reported that he will attend a UC Davis course, The Role of a Planning Commissioner, in Sacramento.

Vice Chair Rao reported that applicants for the Planning Commission are being interviewed by Mayor's staff.

Chair Finlay stressed the importance of getting standardized conditions for CUP's. She said language is currently being worked on for CUP's regarding the revocation issue and Mr. Privat said this should be ready and incorporated in the next CUP conditions before the Commission.

Chair Finlay noted that she and Commissioner Williams attended the ABAG Conference on the Economic Forecast for 2009/2010, which was fascinating and grim at the same time.

Chair Finlay questioned the status of the General Plan process, and Ms. Harbin said it should go before the City Council in June or July. She also raised a question with Mr. Privat regarding the 90 day resolution and ordinance and she agreed to contact him.

**Public Forum - None**

### **Adjournment**

The meeting was adjourned at 10:05 a.m.