

PLANNING COMMISSION MEETING
COUNCIL CHAMBERS, RICHMOND CITY HALL
1401 Marina Way South, Richmond, CA
April 3, 2008
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 7:00 p.m.

Vice Chair Rao led in the Pledge of Allegiance.

ROLL CALL

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

Absent: None

INTRODUCTIONS

Staff Present: Janet Harbin, Hector Rojas, Richard Mitchell, Joe Light, Kieron Slaughter, and Associate City Attorney Carlos Privat

MINUTES – None

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, April 14, 2008, by 5:00 p.m. and announced the appeal process after each affected item.

CONSENT CALENDAR

Chair Finlay noted the Consent Calendar consisted of Items 2, 3, 4, 5 and 6. She said a DRC meeting was to be held last Monday and due to not having a quorum, no recommendations were made for Items 1, 2, or 3.

Item 6 was requested for removal from the Consent Calendar by a member of the public. Mr. Rojas reported an amendment had been made for Item 2 which was contained in Attachment I-2 before the Commission. He said Condition 6 is amended to delete the words, “prior to recordation of the Parcel Map” and replaced with “prior to building permits.” He said there was significant pre-application planning, Design Review Board review and he commended the applicant for the project which was completed within 2 months.

ACTION: It was M/S (Williams/Rao) to adopt the Consent Calendar consisting of Items 2 (as amended), 3, 4 and 5; unanimously approved

Items Approved:

2. **MS/DR 1104637 – Community Housing Development Corporation of North Richmond (CHDC) Tentative Parcel Map for Three Residential Lots at South 28th Street/South 29th Street and Interstate Highway 580** - PUBLIC HEARING to consider a Tentative Parcel Map (Minor Subdivision) for three residential lots and Design Review Permit to construct three new two-story single-family residences on a site bounded by South 28th Street to the west, South 29th Street to the east, and Interstate Highway 580 to the south (APNs: 549-201-016, -018). SFR-3, Single-family Low Density Residential District. CHDC, owner; Michael Woldemar, applicant. Planner: Hector Rojas. Tentative Recommendation: Conditional Approval.
3. **MS 1104457 – Valley View Commercial Condominium Conversion, 4801 Valley View Road** - PUBLIC HEARING to consider a request for a Tentative Parcel Map (Minor Subdivision) that would allow conversion of the four existing commercial spaces into commercial condominium units. The area of the separate spaces would remain as it presently is and no additional building area would be created at the existing 19,843 +/- square foot site located at 4801 Valley View Road (APN: 431-233-017, 431-233-065). Zoning District C-2, General Plan designation of General Commercial District. Frederic Hill and William Dorban, owners/applicants. Planner: Lamont Thompson. Tentative Recommendation: Hold Over To 5/15/2008.
4. **TM 1104568 – Condominium Conversion, 135 Santa Fe Avenue** - PUBLIC HEARING to consider a Tentative Subdivision/Tract Map to convert a five (5) unit apartment complex into condominiums located at 135 Santa Fe Avenue (APN: 558-140-017). Zoning District MFR-1; and General Plan designation of Medium Density Residential/ 918. Dianne Anderson, owner/applicant. Planner: Jonelyn Whales. Tentative Recommendation: Conditional Approval.
5. **CU 1104430 – Conditional Use Permit for Biodiesel Storage and Distribution, 1015 Chesley Avenue** - PUBLIC HEARING to consider a request for a Conditional Use Permit to allow storage and distribution of biodiesel at a ±396,396 square foot site at 1015 Chesley Avenue (APN: 409-313-002). The project would permit the storage of biodiesel in six 30,000 gallon tanks at an industrial site. M-2, Light Industrial District. Alan Ornbaun, owner; Diane and Warren Anderson, applicant. Planner: Kieron Slaughter. Tentative Recommendation: Hold Over To 5/15/2008.

Brown Act – Public Forum – No speakers

Items Discussed:

1. **TM 1103445 – Tiscornia Estates Tentative Subdivision Map /Tract for Six Lots at Santa Fe, Pacific and Bishop Avenue** - PUBLIC HEARING to consider a Tentative Tract Map request to subdivide an 1.21 acre site located in the Tiscornia Estate Specific Plan area into six residential lots ranging from 5,869 to 12,075 square feet at the intersection of Santa Fe, Pacific and Bishop Avenues (APN: 558-183-003, 005 & 008). SFR-2, Single-Family Very Low Density Residential Zoning District. (374.1 Tisc8826). Leonard Gross, A Professional Corporation, owner/applicant. Planner: Joe Light. Tentative Recommendation: Conditional Approval.

Secretary Lee gave a brief description of the project.

Joe Light gave the staff report, said the submitted map shows a new cul-de-sac, he described the configurations of the lots and noted the lots on the uphill side fall short of the actual pavement with an undeveloped shoulder of both roads in-between the lot boundaries and paving on the uphill side. The project proposes 6 lots in the Tiscornia Estate Specific Plan and corresponds generally in size and configuration to the lots, but their relationship with the frontage and roadway differ considerably and therefore there is a need for a subdivision to define the lots.

He described the Specific Plan adopted in 1986 which called for the abandonment of the existing plots within boundaries and reconfiguration of 28 building lots, the closure of some streets to public through access, creation of an open space reserve, and a number of formerly privately held lots to be maintained by an HOA, and public infrastructure improvements whose costs were to be shared by developers, agencies and the City.

The plan has been implemented in a less than comprehensive fashion and there still tends to be differing viewpoints about what the plan entails and it's potential. What remain unambiguous are the land use designations--the 6 lots correspond to 6 buildable sites within the plan and as the last developable sites. All remaining parcels now are in the open space reserve. He said the extension of the bulb at Santa Fe Avenue allows for a different access to those lots. In the original plan, access to all 6 lots was meant to take place from Pacific and/or Bishop Avenue, but in analyzing the plan, Pacific Avenue was anticipated to be closed to through traffic. The closure was deleted from the plan at its adoption but never changed in the plan itself. In the ensuing years, the idea of the extension being the main or access point was presented to the applicant.

He said there has been discussion with neighbors about the larger plan issues and the Pt. Richmond Neighborhood Council submitted two separate resolutions which are attached to the staff report. Resolution 1 asks the Planning Commission to take the opportunity to legalize the open space provisions of the plan by conditioning an eventual approval of the plan with restrictions or covenants that would encumber the open space, most of which is owned by the current applicant. The City Attorney has advised they may not do so in the context of this application and the definition of the open space would need to be pursued by a separate application.

The second resolution has to do with the configuration and disposition of the proposal. They ask that all access take place off of Santa Fe rather than a split access, they ask that the Commission impose a supplemental development standard of a reduced height limit above the pavement level at Pacific/Bishop, restricting all building to be 4'10" at maximum height which would be defined as the peak of the roof rather than the standard definition of roof height which would allow a mid-point between eave and peak of the roof. The third condition they ask for is that no lots be greater than 9,900 square feet. Currently, one lot is over that size at around 11,000 square feet. If the net size of the lot minus a street and public utility easement is taken into account, it is about 8,000 square feet. The neighbors did not want lots to have the ability to be subdivided in the future and staff would not allow a 7th lot at any rate, but agree that the one lot would need to be reconfigured.

The conditions have been included in the draft resolution as Exhibit 1 in the staff report and there are also revisions in conditions as shown on the yellow sheet before the Commission. Additionally, a revised condition specific to CEQA is that staff has changed its determination in

conformance to CEQA to a categorical exemption which exempts projects under 5 acres surrounded by urban development or public utilities and which habitat does not contain endangered species. Staff would like the Commission to consider that categorical exemption rather than the reliance on the 1986 EIR originally specified in the staff report.

Chair Finlay questioned why staff was requesting the Commission consider this exemption, and Mr. Light said staff received a challenge and question on the City's reliance on the EIR earlier today. Not having the legal representative who thought through the original approach, there could be some merit in the challenge and the exemption could cover the issue in a comprehensive and defensible manner, and it would be expeditious to do so. Attorney Privat said the categorical exemption is Rule 15.332; Infill Development Projects, and according to Mr. Light, the Element's A-D are met, so the exemption does apply.

Secretary Lee believed this was a significant issue and to change it just prior to the meeting seemed strange to him.

Len Gross, Applicant, asked Matt Rye, the surveyor on the property, to assist him in the presentation. He objected to two items; Item D relating to all 6 lots being accessed from the bottom and part of the Specific Plan states all lots are to be accessed by Pacific. He does not mind if 3 lots are access through the bottom and the other 3 lots from the top. He also disagrees with the 4'10" limitations and he has indicated in the past that he would not block anyone's views, which could be handled at the time of design review.

Matt Rye, Land Surveyor, said they have worked on the project for many years, said they were missing Sheet 10 and could not comment on Items L-T. All other items they agree with, with the exception of Items D and W. Regarding access from Santa Fe, they object because they designed all 6 lots to have access off of Pacific Avenue, which is in the specific plan. They are compromising on 2 of the lots to have different access. He said the cul-de-sac and lots were not designed to have access for all 6 lots, he hopes the Commission over-rules this and hopes the Commission accepts their compromise of allowing three lots to have access from below. When they designed the lots, they designed lot 5 to have no access from below at all. The Specific Plan contemplates the homes should be located from above because the slopes are more stable, so there are a number of elements that state access should be from above.

Regarding Item W, he questioned the request for a height restriction of 4'10", said they do not want to block any views and would be happy to have a design restriction to keep the homes from view blockages. They respect their right to walk along Pacific Avenue, but the developer also has property rights and for them to learn of the new recommendation was completely unacceptable. He was hopeful the Planning Commission would stick to the specific plan and they are amenable to have three lots access from below and compromise, as well as a condition that would address view blockages.

Vice Chair Rao asked that Items L-T or page 10 be provided to Mr. Gross and Mr. Rye in order for them to review the document while the public comments on the project.

Secretary Lee questioned if the net area of lot 2 is the total area less the utility easement, which he believed would not affect the total square footage. Mr. Light said the square footage could be affected, the easement is part of the lot area, the developable portion is less and the Commission would look at gross and not net figures.

Mr. Rye said the net square footage is less than 10,000 square feet and he did not believe the Planning Commission should change the size of the lot. The Specific Plan clearly states there are to be 6 total lots and no more, and therefore, there is no reason to lessen the lot area. **Chair Finlay** said; however, the gross square footage was 11,000 square feet.

Public Comments:

Robert Kingsbury Lane, member of the Land Use Committee of the Pt. Richmond Neighborhood Council, said he personally asked Mr. Gross during the Lane Use Committee meeting of the Neighborhood Council whether he would agree to a 4'10" limitation, and he said yes. He conditionally supported the project with conditions to mandate the 4'10" height limitation, allowance for the 6 lots, supported Items D and W on the yellow sheets which are both consistent with the Land Use Committee recommendations and are incorporated by staff. However, he asked for a more specific definition of "building official". Regarding access for lot 5, there is a 10 foot utility easement on Lot 4, and he asked that a common driveway accessing along the utility easement be done, which would be in keeping with maintaining access to the utility easement.

Rodrick Iverson Satre supported the project with a change in Condition S; that each lot be included in the homeowners association formed in the future. The 1986 resolution of the City Council requires regulation a homeowners association be formed. On November 26, 2007 he wrote a letter which pointed out that as a ratified plan, the City of Richmond cannot determine a section is exempt under CEQA when there is a specific plan for the project.

Chair Finlay asked for a legal opinion, and Attorney Privat said this project is exempt and not the original CEQA analysis.

Bonita Satre Daly read a letter of concern from two affected neighbors who live at the very end of Santa Fe on Western relating to drainage, adverse road conditions created by heavy truck traffic, bollards installation and two homes not constructed over a period of two years. She believed the Commission can declare exemption, but she was not sure if it could be, was suspicious why homeowners want a homeowners association and questioned who would benefit from formation of one.

Secretary Lee noted the documents do not indicate there will be a homeowners association, but "if" one was formed, and if the homeowners do not want one, there most likely would not be one.

Stuart Flashman, Attorney representing homeowners within the Tiscornia Estates Specific Plan area, said he sent the City two letters, said the amended agenda report changes the CEQA determination, objects to the last minute change, believes there is a violation of the Brown Act having been handed such an amendment, and suggested holding over the item. He was not sure it qualifies for the categorical exemption, and the open space area is not developed and the land should not be defined as infill, said the project is an example of defining no impacts by piece-mealing. The EIR was written recognizing the entire area as a whole and impacts need to be mitigated. There are also a number of issues brought up tonight like drainage, views and others which deserve CEQA review and believed a categorical exemption should not be allowed and he suggested an initial study be performed. The open space was intended to mitigate the cumulative impacts and if a CEQA exemption is allowed, it would disregard those impacts. The specific plan also required an open space component prior to 30% of the parcels being occupied, which has not occurred. He believed there was no assurance the open space would

happen and therefore, it is not consistent with the specific plan. Regarding the City Attorney's opinion relating to the project, he opines you can only consider the parcels within the subdivision, but he did not take into account there is a specific plan which includes open space, and there is an EIR that identifies the open space as a mitigation. If not implemented, it will never be implemented which is a violation of CEQA.

John Mengshol said he is an attorney but not an expert in CEQA law, but he believed one of the problems is that they have never seen any research done by the City Attorney, except for a memo which indicated the Planning Commission could not consider Mr. Gross's other property in coming to a decision. They would like to implemented the plan and open space, the accompanying resolution talks about the property being maintained in private ownership with an HOA being formed, which he felt could be worked out in the future. Mr. Gross has already indicated that after he receives approval of the six lots, he plans on getting two more buildable lots in the open space designation and this is the reason for their concern. He noted the many people in the room who were of the same position.

Don Felt said people who build homes in Tiscornia paid special fees for building permits and they all relied on the assurances in the specific plan in buying their lots, he felt there was no failure in life that is not redeemable, and he believes the hour of redemption is at hand. Mr. Light's report is clear and thorough; everyone agrees that the application exhausts the allowance of lots for development in the specific plan area. The law requires the City to condition development of the lots on a final dedication of the open space to the public interests and the residents insist upon it.

Ralph Morgan said 22 years have gone by since this plan was implemented without closure, he discussed things that happened 22 years ago such as PC viruses, believes there have been many concessions and the applicant has received many without much in return, and he asked that open space be maintained. He believes many have paid a price, the City Attorney's office has been complacent, and asked for the right thing to be done and get the process moving in the right direction.

Allison Lehman referred to Mr. Flashman's comments on piece-mealing, said there were two existing homes on Santa Fe when they bought their house, there are five driveways there now and the Planning Commission wants to add six more to an unpaved road, believes that once the lots are given to the applicant, he will begin to work in the open space, and said once gone, no one can ever get it back.

Jerry Keefe opposed the project because it deals with only the six lots on Santa Fe and the City needs to consider the open space and the plan as a whole, which Mr. Flashman laid out quite carefully.

Rebuttal - Applicant

Matt Rye said the first speaker discussed lot 4 and they have an easement for utilities because lot 5 is not accessed from Santa Fe. He thought the easement could be turned into an access easement; however, he asked to keep in mind the slopes at the bottom by the cul-de-sac is designed about 2.5:1 ratio in slope. They would have 8-10 foot retaining walls if the Planning Commission were to request that a driveway would be accessed off of Santa Fe to serve lot 5. He did not believe anyone wanted to see retaining walls of that height in order to get some access off of Santa Fe. He summarized by saying the subdivision was not designed to have all

the lots access off of Santa Fe; they were designed to have 4 of them access off of Pacific Drive.

Leonard Gross said a mistake was made when speakers referred to his statement about 4'10" heights and said he was referring to the southeastern spot where access comes from the other streets. He said as one walks along Pacific Drive, there will be no one blocking anyone's views. He believed that open space means where one can look and see the San Francisco Bay or Mt. Tam and not views of another house, and said they will not block anyone's views.

Rebuttal - Opponent

Stuart Flashman said open space is more than just not having ones' views blocked; open space is recognized in the EIR as preserving vegetation, preserving the ecology of the area and allowing for public access in an area and it does not necessarily mean that this open space area needs to be dedicated to the City. Tiscornia Specific Plan specifically calls for this to be kept in private ownership, but for it to be maintained through the efforts of the owners of the properties within the Tiscornia Estates. One possible way of doing this is by way of a homeowners association, although none is yet conformed. Another possible way would be by way of a landscape and lighting assessment district, which again could do the maintenance on this open space area. In order for any of those things to happen, the open space improvements have to first happen. That's what the plan calls for, that's what the EIR calls for and that's what the conditions of approval for this project really ought to call for--is that the improvements in the open space area that are called for in the Tiscornia Specific Plan is made a condition for the final approval of this project--before houses are built, the open space improvements should be made, and he requested a maintenance agreement happen before the project is finished.

Mr. Light gave staff summation and said open space has been continually deferred for reasons that continue to this day, mainly because when the plan was adopted, it's functionality was lacking. Given the lapse of time, he did not believe the City has gotten any closer to actually hammering down a way to make it function the way it was anticipated to function. He acknowledged the fact that these are the last developable parcels in the 1986 plan, many of the intervening years included discussions about finding ways to come to mutual agreements where all of the aspects of the plan could be implemented and none of them have come to a solution. This particular process is not one which allows staff or the Commission to resolve that issue of the open space within the context of this proposal or the authority on this subdivision.

Based on this, the best staff has been able to do is the context of a homeowners association to suggest that these lots be encumbered by that association if, in another process, it comes to fruition. Short of that, the open space issue probably will fester until some other time that it can be resolved. Regarding the conditions, in relationship to the access in particular to height limit, the Specific Plan does have development guidelines which allow for higher heights than Pacific Avenue than is being asked for at this time. Up until the hearing, staff was under the impression from the applicant that he was amenable to the height limitation and in that case they felt reasonably comfortable that this would be a viable condition. It still can be if, in this context, the Commission finds that there is specific conditions on these 6 lots which would require or which would ameliorate the development.

Based on the findings, he believes the Commission could retain that condition in realizing that it is a departure from the ordinary allowance of the Specific Plan which has seen many departures from its rules over the past, as well. The same would apply to the lower slopes. It is probably true that using the easement shown as an access point would entail a great deal of retaining

walls and might not be preferable, but could be practical. If you were to improve the 6 lots from below rather than 5 or 4 and possibly 1 above or defer the actual orientation of homes to specific developments in the design review when each individual lot was to come before a Design Review Board or successor, if the Commission were to make findings that access must come off of Santa Fe, the Engineer or Staff would have to redraft the division of lots probably resulting in shared driveways for some of those lots to make it optimal or practical. Staff could set to reconfigure it and it could come back to the Commission or, as the Commission has written in the attached resolution, could be deferred to a development review committee and/or the Planning Director and the Staff prior to the Final Map's submission. There is the possibility that ordinance may be amended prior to a Final Map submission in which case that authority could involve to the Planning Director and the staff in reviewing the development plan, but would be the Commission's choice if it chose to retain that condition.

Vice Chair Rao questioned if the City will be in full compliance with the EIR even if it does not address the issue of open space at this juncture, and Attorney Privat said in order to get a more full articulation of Attorney Renfro's opinion, he recommended continuing the meeting.

Vice Chair Rao questioned Mr. Privat as to whether the exemption decision was based on some statute and Attorney Privat said he cited the statute section for which the determination was made which was Section 15332, believed it was disingenuous to say this was imposed or decided upon at the last minute by the opponent, and confirmed with Vice Chair Rao the City was not in violation of the Brown Act.

Chair Finlay said she received a copy of the letter written by Mr. Flashman in the afternoon and said she understands the concerns of the community about this whole formalization of the Open Space Element. She also agrees with the City Attorney's office that what we have is a 6 lot development. What we do not have is the Specific Plan that we have asked be addressed. She questioned if there was a way to first adopt the resolution and make a recommendation to the City Council to formally create a resolution acknowledging the completion of this Specific Plan and the Open Space Element in the plan.

Mr. Light said he believed it was within the scope and purpose of the Commission to make such a recommendation to the City Council. He said the past 22 years have gone by with a number of attempts, lead by our Attorney's office to actually do that. Their perspective was that any unilateral action apart from the City would result in lawsuits. He believed the guiding principle behind the long delay has been trying to reach a understanding with a majority of the landowners and that has never happened. And, he did not believe a resolution in and of itself would necessarily have an outcome, but he was not sure of any other way in starting.

Chair Finlay said it appeared to her that this is the Commission's only course of action; to make a recommendation to the City Council to adopt a Specific Plan, and Mr. Light agreed.

Attorney Privat said the Commission could also just wait for some type of application before the land that is designated undevelopable and **Chair Finlay** said she would feel more comfortable being proactive; that if they choose not to act when an application comes forth, they have the same option one more time.

Commissioner Lee questioned whether the Commission would have the same effect if it conditioned this such that the open space was defined in some manner and then, in essence, if the applicant then chooses to appeal our condition that will force it to the Council at which time they will need to make that same decision. **Chair Finlay** agreed Commissioner Lee was correct,

but she was not willing to do that because she agrees with what counsel is telling the Commission, and **Commissioner Lee** supported this approach.

Chair Finlay referred to the conditions of approval and said the recommended action is to adopt a Resolution in Exhibit A and to approve the Tentative Map. However, the conditions that have been written would require a revised Tentative Map because the map that is before the Commission does not reflect what is contained in the conditions, and Mr. Light agreed. She confirmed the motion would be for a revised Tentative Map, subject to the conditions that are reflective of the imposed conditions in the Conditional Use Permit. **Commissioner Lee** noted this was addressed in Item 3C, which talks about a new map coming back and being submitted.

Commissioner Lee said he agrees the resolution was well-crafted and said he would like for the Map to return to the Commission and not to the Director of Planning and Building Services, and he confirmed the condition was the only change he would propose for amendment.

Chair Finlay referred to two additional items; Item D deals with all of the properties being accessed from Santa Fe, and she questioned if the Commission wanted to consider giving lot 5 access from Pacific Avenue. **Commissioner Lee** said he preferred to stay with the neighborhood council's recommendation that it is a matter of redrawing the plans; making 6 lots instead of 5 lots.

Commissioner Duncan said he concurs with Mr. Rye in that there are some physical constraints; in looking at the typography, there will be some genuine difficulties bringing everything in off of Santa Fe. He felt it was close to being physically impossible to do this and he believed the Commission was left with bringing some in from Pacific Avenue. He suggested lots 3 and 4 in and asked for Mr. Rye to speak to this.

Mr. Rye agreed with Commissioner Duncan and said the subdivision was designed and the cul-de-sac was designed again to only have access from lots 1 and 6. Now on the latest map before the Commission, they have shown to have 3 lots accessed from Santa Fe and 3 from Pacific. Lots 1, 3, and 6 would be from Santa Fe; 2, 4 and 5 would be from Pacific. Lots 1 and 6 are obviously accessed from Santa Fe because this is the way they were designed. It was their intention to have lots 2, 3, and 4 access from Pacific and this is the way they are designed. As the property line gets down to Santa Fe, they become very narrow and to design any sort of home down on the slope would be a very difficult proposition and one involving very high retaining walls which again is the reason why the specific plan in the EIR contemplated all these lots being accessed from above. However, they were able to design something that lots 1 and 6 could be well served from below, and their ideal is still to have the 4 lots—2, 3, 4 and 5 access from above and this is the way the subdivision was designed.

Commissioner Duncan believed they were up against some profound physical restraints. **Chair Finlay** concurred, but said she also hears what neighbors are saying.

Mr. Rye said on the plan before the Commission, lots 2, 4 and 5 are what they, as a compromise, would like to see from above. Ideally the way the plan was designed, lot 2, 3, 4 and 5 would be accessed from above, but he said he believes they might be able to make lot 3 work from below. It will not be an ideal situation and will not look good with huge retaining walls, but in the spirit of compromise, this is what the Commission has before them and they believe it might be an acceptable solution.

Commissioner Lee said he would defer to Commissioner Duncan, said he trusts his judgment on the issue.

Commissioner Duncan referred to the 4'10" issue because it also implies there would be garages up there. He felt one way to do this might be to impose the fact that the garages would have a height limit similar to an ancillary structure of 12-14 feet, and on top of that garage would be up against the setback like so there would be a building and a gap and a building and a gap so there would be some rhythm to the garages and a rhythm to the openings as well.

Chair Finlay felt there were many like this in the Pt. Richmond area and other locations within the City. She said then this leaves the Commission with a problem in re-crafting some of the conditions. She questioned if there were conditions in the February 3 report that could be merged into this document that would cover the scenario discussed, or she asked if new conditions needed to be crafted. Mr. Light felt it would be wise to specifically craft them to the Commission's intentions.

Chair Finlay therefore suggested the Commission continue the public hearing in order for staff to have appropriate time to address the revised conditions. The majority of the Commissioners agreed.

ACTION: It was M/S (Rao/Duncan) to continue the public hearing (TM 1103445) to May 15, 2008; unanimously approved.

6. CU 1104547 – Conditional Use Permit for Massage Establishment, 10281 San Pablo Avenue - PUBLIC HEARING to consider a request for a Conditional Use Permit to permit a massage establishment in an existing ±1,250 square foot tenant space at 10281 San Pablo Avenue (APN: 510-113-007). C-2, General Commercial District. Jane Yoon, owner; Jianpei Wang, applicant. Planner: Kieron Slaughter. Tentative Recommendation: Conditional Approval.

Kieron Slaughter gave the staff report, and gave a brief description of the project and request for a CUP for a massage establishment, its zoning, nearby uses, use of the proposed massage services, described certificates submitted by the applicant, said the applicant has operated a prior business in El Cerrito for the past 7 years which is not ADA compliant and primarily serves women and elderly adults. Staff contacted El Cerrito Police Department for a background check which resulted in no complaints, violations, or incidents. He said in order to approve the CUP, the Planning Commission must make all findings. The Zoning Code classifies the use as an adult business; however, massage establishments are not listed within that category and falls under the Health Section, Chapter 9.38 of the Municipal Code for which staff has determine the application falls under. He read excerpts from the Chapter, said staff conducted research about the business and recommends the Planning Commission conditionally approve the CUP.

Mr. Slaughter said staff has responded to a letter submitted by the Richmond Annex Neighborhood Council dated March 28, 2008 which was received after completion of the staff which is before the Commission and staff included four letters of support, two letters of opposition and the applicant has also submitted additional letters of supports and cards.

Jianpei Wang, Applicant, said she wanted to relocate her business so that it is easier for seniors to access, said she takes pride in her business, has provided physical therapy since 1987 in a China hospital, in 2000 she came to the United States and has owned her business for 7 years,

she has 207 patients 70% of whom are women and 69% are seniors, and asked for Commission approval.

Chair Finlay confirmed Ms. Wang received a copy of the staff report and that she understands what the conditions are for her business, as well as the hours of operation.

Vice Chair Rao confirmed Ms. Wang practiced Chinese physical therapy which is different than what is done in the United States and has practiced therapeutic massage in the United States for many years but does not have a physical therapy license.

Chair Finlay referred to the conditions and she confirmed Ms. Wang is the only person allowed to work at her business; that if someone works with her she would need to return to the Commission to have the CUP amended. However, **Chair Finlay** suggested amending Condition 5 of the CUP now to allow for her intent for future growth in order to allow for it and asked Mr. Slaughter to explain the proposed change to the applicant due to her fluency in English.

Public Comments:

Garland Ellis, Vice President, RANC, voiced concern regarding establishments proposed for their neighborhood and others who are operating without CUPs as well as the expansion of those in El Cerrito. He said the General Plan definition is out of date and the language ambiguous, the business requires licensing and certification from the State of California, suggested the City clean up the language in the Code to better define the operation of the business and require State certification, believed many exotic massage businesses have taken the name as therapeutic to get around the law, parking requirements are higher for certain definitions, the businesses cannot locate in a residential district, cannot be within 300 feet of a park or elementary school and he said this business is within that area. He also believed communities have become inundated with massage parlors and the link to prostitution, said many have moved to the East Bay from San Francisco and that many cities have crafted new ordinances in response.

Mary Selva, President, RANC, said two businesses were currently operating without permits and are suspicious, said in 2005 a proposal came before the Commission which was denied based on the fact there was inconsistencies with the definitions in the zoning ordinance, and she discussed problems of similar nature due to the adult book stores and motels which harbor illegal activity. That business was denied until such time the General Plan and zoning ordinance were amended. She said once the CUPs are approved and there are problems, it takes a significant amount of staff time to address the problem, said there are 8 businesses between Central Avenue and Potrero and more beyond that area and they have become a problem. In the rear of the lot there is a used appliance store, a new owner acquired the property several years ago and the parking lot area is now being used for old refrigerators and appliances, which is inappropriate use for valuable parking space.

Nanearo Touson, RANC, said that within less than a mile there were 8 establishments, said this establishment proposed to be open is less than 1,000 feet from another massage establishment on the corner of Columbia and San Pablo, believes the business affects their property values and neighborhood, the applicant said she would not advertise and is, and she asked the Commission to deny the CUP.

Tom Hoffman, RANC, spoke of neighborhood dynamics, presented pictures of the 8 establishments within a .7 mile distance along San Pablo Avenue, said 3 of the 5 in El Cerrito

have on-going cases of code violations; many are very unprofessional and have multiple employees. When Ms. Wang came to their meeting she indicated she would be the sole operator but there are 3 total which are proposed.

Commissioner Lee questioned if Mr. Hoffman's concern is that the current establishments were all adult parlors, and Mr. Hoffman said he was not sure legitimate activity was going on, but from what he has seen and heard, he has significant concerns and he has not seen any elderly people going into the parlors.

Vicki Diaz, RANC, said she lives around the corner from the proposed business, is not here to accuse anyone of illegal activity but she opposed approval of the permit to open an 8th massage parlor in the neighborhood. She presented a petition signed by 101 residents opposing the permit, there are already too many in the neighborhood, she questioned who would monitor the 23 conditions, there is a children's dance studio and a tuxedo store very nearby and she was not sure that such a business so nearby was compatible, there is a parking problem, this is not the first time a parlor has tried to come into the neighborhood, and she urged the Commission to deny the permit.

BREAK

Chair Finlay called for a 5-minute break and thereafter reconvened the meeting at 9:35 p.m.

Rebuttal – Applicant

The applicant said she did not want to provide a rebuttal.

Vice Chair Rao questioned how many customers would wait while she is tending to a customer. Ms. Wang said there are usually 6-7 people waiting.

Commissioner Lee said in light of the opposition, he asked if she thought about locating in another area, and Ms. Wang said she asked her patients and they like the location and she has patients who have patroned her for many years who say they will follow her wherever she locates. Some patients cannot see her and want her to go to their home, but she knows she cannot do this.

Chair Finlay confirmed Ms. Wang was currently located on Madison and San Pablo which is on the border of the Annex neighborhood more than one mile down San Pablo Avenue.

Vice Chair Rao confirmed Ms. Wang understands Mandarin language and her 5% of her patients are Chinese. He did not believe Ms. Wang understood the Commission's questions.

Chair Finlay asked if Ms. Wang could bring a translator in for a hearing in order to translate from English to Mandarin so she could better understand the Commission. She said if the Commission did not approve her permit, she would continue to work at her current location, but she hoped to move to the new location.

Rebuttal – Opponent

Tom Hoffman, RANC, believed Ms. Wang did have a translation problem and has a limited understanding and response to questions, questioned whether she would understand the implications of the CUP, he believed there needs to be a precedence established for areas of

the City, requirements for medical certification and the different types of massage, inspection and operations. The City has no vice squad and it is difficult to enforce problems, and once the Commission grants a business, the same type repeats itself over and over again, there is a business that operates along San Pablo that operates without a permit, and he think there needs to be change in the grandfathering clause.

Commissioner Lee questioned how a business operates without a permit, and Planning Director Mitchell said staff had no current facts about Mr. Hoffman's statements of illegal operations. Mr. Hoffman said there are 3 operating without permits and they change their operations from acupuncture to acupressure which is massage.

Chair Finlay shares the concern there is a language barrier, said one option would be to continue the hearing and ask the applicant review the conditions with a translator and return to be sure the Commission has a full understanding, or the Commission could proceed.

Commissioner Lee believes this should be the applicant's option and not the Commission's decision and he did not believe her language barrier was that much of an impediment to proceed.

Commissioner Williams said if the business was some other operation, would the problems still exist as it applies to parking, and Mr. Slaughter said it would depend upon the size of the commercial space. For spaces under 5,000 SF are not required to provide parking and he confirmed that the police background information was accurate.

Commissioner Lee referred to signage and Mr. Slaughter said signs are allowed and the applicant indicated she has a large enough clientele that she does not need to advertise. If she were to put up signage, she would need to apply for a sign application. **Commissioner Lee** believes the neighbors do not want the area to be the massage capital of the East Bay, he believes this is a legitimate business and without having to advertise services, and therefore, he suggested the Commission restrict signage. Attorney Privat said due process would allow the applicant to come forward with a sign permit application and it would be unfair to her to impose this condition.

Chair Finlay questioned and confirmed with Mr. Slaughter that he believed the applicant understands and based upon her history in El Cerrito, he feels she has been honest, understands the conditions and is willing to abide by them.

Commissioner Duncan referred to a situation where there were many bars and someone was applying for a CUP one more bar, he believed it is a philosophical situation and he questioned if there was reason to say no. Mr. Light said there could be a proliferation, typically if the City feels this they address it directly through an enabling act to limit the number, but it can be the basis of a finding. Ms. Harbin said, however, in this case there is no particular limitation on the number and types of uses that can go into this specific area.

Chair Finlay said the RANC could have requested the Council consider a moratorium on massage establishments, but it is difficult for the Commission to make an arbitrary decision on limiting the number of such businesses. Mr. Slaughter said of the 8 businesses, only 3 or 4 are technically in Richmond and the others are in El Cerrito. He also noted that ABC regulates the number of bars in a census tract.

Commissioner Duncan believed the applicant wants to move for reasons of no disabled access and it seems to be an unimpeachable argument and something very legitimate. His tendency would be to support her as a legitimate massage therapist in a field of people who may not necessarily be legitimate.

Vice Chair Rao said he could support approval with only one person providing services and believes the business is legitimate due to the applicant's history, and **Commissioner Duncan** agreed.

Chair Finlay announced she would vote against the application due to the applicant's statements about being the only employee.

ACTION: It was M/S (Rao/Duncan) to approve CU 1104547 subject to four findings and recommendations. The motion carried by the following vote: 3-2 (Finlay and Lee voted no).

COMMISSION BUSINESS

7. Reports of Officers, Commissioners and Staff

Mr. Mitchell announced there would be a special Commission meeting regarding Chevron's project on April 10, 2008 which is a continuation of a meeting on a CUP. **Chair Finlay** confirmed all members would be in attendance at that meeting.

Vice Chair Finlay thanked the City for allowing the Planning Commission to attend the League of California Cities' meeting in Yosemite. Major topics of discussion were Iwani principles, greenhouse gas emissions, AB 32 and its affects.

In addition to the April 10th meeting, she announced the May 1st meeting will not take place because the Chambers will be used by the City Council. The next Planning Commission meeting will take place on May 15, 2008.

There has been the formation of the 23rd Street Steering Committee for improvements to the 23rd Street corridor. Mr. Hector Rojas has asked her to appoint a member of the Commission to serve on that committee, and she asked Commissioners to contact him to learn more about the committee she will soon make her appointment.

She also asked that water be provided to the Commission in the future, and she thanked Commissioner Duncan for his service on the Commission and Mr. Light for his thorough staff report regarding Item 1.

Public Forum - None

Adjournment

The meeting was adjourned at 10:00 p.m.
