

PLANNING COMMISSION MEETING
COUNCIL CHAMBERS, RICHMOND CITY HALL
1401 Marina Way South, Richmond, CA
May 6, 2010
7:00 p.m.

COMMISSION MEMBERS

Virginia Finlay, Chair
Jeff Lee
Jovanka Beckles
Carol Teltschick-Fall

Nagarajo Rao
Charles Duncan
Sheryl Lane

The meeting was called to order by Chair Finlay at 7:05 p.m.

Chair Finlay led in the Pledge of Allegiance.

ROLL CALL

Present: Chair Finlay, Vice Chair Lee, Secretary Duncan, and Commissioner Lane

Absent: Commissioners Beckles, Teltschick-Fall and Rao

INTRODUCTIONS

Staff Present: Hector Rojas, Lamont Thompson, Richard Mitchell and Carlos Privat

MINUTES – March 4, 2010

Due to the lack of a quorum from the March 4, 2010 meeting present at this meeting, the Commission continued approval of those minutes to the next meeting. Chair Finlay said she provided a spelling correction to Mr. Thompson, and Secretary Duncan noted that Commissioner Beckles was noted as both present and absent on roll call, and confirmed that she was present for the March 4th meeting.

April 1, 2010

<p>ACTION: It was M/S (Duncan/Lane) to accept the minutes of April 1, 2010; unanimously approved (Lee abstained).</p>
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CONSENT CALENDAR

Chair Finlay noted Consent Calendar items included Items 2, 3, 4 and 5 on the agenda. Staff reported that there were speakers for items 1 and 4. Vice Chair Lee questioned and confirmed that one speaker was in favor of Item 4 and the other speaker did not indicate their position. Chair Finlay requested removal of Item 2.

Secretary Duncan noted that the Consent Calendar then consisted of Items 3 and 5.

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

Consent Calendar Items Approved:

3. **PLN 09-098: Taqueria Sinaloense** - PUBLIC HEARING to consider a Conditional Use Permit to operate a new mobile restaurant at 4919 Clinton Ave. (No APN). C-2, General Commercial District. Abboushi Mohammad Manuel, owner; Amadeo Gil-Recinos, applicant. Planner: Hector Rojas. Tentative Recommendation: Conditional Approval
5. **PLN 10-046: Taqueria La Carreta** - PUBLIC HEARING to consider a Conditional Use Permit to operate a new mobile restaurant at 1430 Cutting Blvd. (APN: 544-262-002). C-1, Neighborhood Commercial District. Christine K. & Vahdatpour Mohammad Reza, owners; Rene Cabrera, applicant. Planner: Hector Rojas. Tentative Recommendation: Conditional Approval

Brown Act – Public Forum – No speakers

Chair Finlay provided an overview of meeting procedures for speaker registration and public hearing functions and procedures. She said items approved by the Commission may be appealed in writing to the City Clerk by Monday, May 17, 2010, by 5:00 p.m. and announced the appeal process after each affected item.

Regular Items on the Agenda and/or Removed from the Consent Calendar:

1. **PLN 10-020: Red Taste Wine Shop/Tasting Room** - PUBLIC HEARING to consider a Conditional Use Permit to operate a retail wine shop and tasting area with On-sale and Off-Sale Beer and Wine Licenses at 3254 Pierce St. #C113/M108 (APN: 510-060-006). C-3, Regional Commercial District. 3254 Pierce Street Associates, owner; Jacky Chou Bin Liang, applicant. Planner: Kieron Slaughter. Tentative Recommendation: Conditional Approval

Mr. Thompson stated that on April 1, 2010, staff was instructed by the Commission to have forms completed by the Department of Alcohol & Beverage Control (ABC) and returned with a report. Some items missing on the forms were Sections 11, 13, 14, 15 through 19. Staff spoke with the ABC Officer who explained that the applicant may allow small wine tasting located in his proposed shop but given the nature of how that wine cellar room would function, it would be similar to a bar. The ABC Officer did not think this was appropriate for the Pacific East Mall, given the family-friendly nature and openness of the mall. The Officer felt two licenses would be better; one a Type 41 license for a restaurant type of use allowing alcohol beverages to be consumed on site; and second, a Type 20 license which would allow them to take beer/wine off site in prepackage containers.

When staff reviewed the forms completed, they concluded there was an undue concentration of on-sale consumption. Staff conducted a survey and found it was predominantly restaurants that were in the census tract that used the on-sale license. They felt the over-concentration was a good thing because there was some synergy. Staff was able to prepare some use and necessity findings for on-sale beer and wine for this type of business license.

Mr. Thompson stated there are 5, Type 20 licenses allowed, and currently with the proposed business there would only be 3. At this time, staff believes the convenience and necessity

findings can be made for the following reasons: 1) that the proposed business would provide an educational service (wine tasting); 2) it allows for the ability for patrons to taste wines prior to their purchase; and 3) patrons can take it off-site for their consumption. The wine shop would occupy an empty tenant space in Pacific East Mall which would promote a synergy among tenants at that mall. And, given that it is a mall location, it would not adversely affect nearby uses like churches, residences and other businesses in the area. The overall retail nature of the mall takes into traffic, as well. Based upon this, staff is recommending approval of a conditional use permit and additional findings for the convenience and necessity.

There were no questions of Commissioners. Chair Finlay re-opened the public hearing

Public Comments:

Corky Booze, Richmond, said the Pacific East Mall is one of the most productive in the area. He said they are trying to do importing, they understand what they need to do with the ABC, and thanked the Commission for providing the opportunity to clarify the matter.

Naomi Williams, Chair of the West County Alcohol Policy Working Group, said she met with business owners at the Mall, visited the location where the tasting room would be, and she indicated to them that they not only require a Type 20 license but also need a Type 41. She said the owners feel that their location is not large enough for tasting inside, and the owners decided they would not require the tasting part of the license. However, they do want the Type 20 and would only sell wine. The staff report indicates they will have a tasting room and to approve it this way is not correct. It would require two licenses for tasting.

Mr. Thompson said staff was not given an indication that there would be only wine sales on site when he prepared the staff report. However, he did overhear that only wine sales would be taking place on site, but the application before him is for both wine tasting and sales, and this will be maintained until written confirmation is received from the applicant for something else.

Mr. Privat said the applicant is applying for two ABC licenses; one for tasting and one for off-sale. He suggested asking the applicant to clarify. Mr. Thompson noted that if the applicant wants to withdraw the wine tasting portion, it could be done and staff would simply strike the Type 41 from the CUP, but he suggested he be asked.

Jacky Chou Bin Liang, owner, said he wanted to sell and operate the wine tasting room because many patrons like to taste it due to being confused about the quality of the wine. They want customers to be able to choose the right wine so they can determine which wines to purchase.

Chair Finlay questioned if Mr. Liang's intent was to sell the wine and also have them taste it and questioned if the operation would be a retail outlet. She said there are questions as to whether Mr. Liang has changed his plans.

Mr. Liang said he would like to be able to do both wine tasting and sales.

Commissioner Lee questioned if customers would be able to buy a glass of wine, and Mr. Liang said no; they can taste wine for free and be able to buy bottles of wine.

Commissioner Lane questioned and confirmed that the tastings correspond to operating hours from 11:00 a.m. to midnight on Fridays and Saturdays.

Chair Finlay noted the resolutions allow the applicant the ability to have tastings and purchase bottles of wine.

Rebuttal/Opponent

Naomi Williams said this is not what the owner had indicated at their meeting. At the meeting they indicated that they would not taste the wine and would only sell it. She reiterated that they will need a Type 41 license plus the Type 20 license, and on the staff report it indicates only one.

Mr. Privat referred to Condition number 8 which addresses the limit on licenses and it identifies a Type 20 off sale beer and wine and a Type 41 on sale beer and wine, and Chair Finlay read the condition into the record.

Commissioner Lee clarified that the staff report calls for a Type 40 license, which needs to be revised to a Type 41, and Chair Finlay acknowledged this and noted that the correct number was contained within the Resolution.

The public hearing was closed.

Vice Chair Lee questioned if the CUP runs with the land. Mr. Privat noted that all CUP's run with the land. Vice Chair Lee said this space will have grandfathered in the ability to utilize the Type 41 license up to midnight on Fridays and Saturdays. Chair Finlay added that there are a number of businesses in the mall that stay open considerably later, and the square footage is only 677 square feet.

ACTION: It was M/S (Duncan/Lee) to approve PLN 10-020 that would allow a wine shop, tasting room; the Red Taste Wine Shop at 3254 Pierce Street, based upon the CUP findings 1-4, and use and necessity findings, as well as planning conditions 1 through 12 and building conditions 13, 14, and 15, and adopting the resolution; unanimously approved.

- 2. PLN 09-054: La Selva Restaurant Patio and Grill - PUBLIC HEARING** to consider a Conditional Use Permit to expand an existing restaurant use. The applicant request approval of outdoor restaurant seating area on a vacant parcel adjacent to 1049 23rd St. and enclosed barbeque grill. (APN: 530-210-034). C-2, General Commercial District. Angela M. & Dario F. Rabak, owners; Cesar Segura, applicant. Planner: Hector Rojas. Tentative Recommendation: Conditional Approval

Hector Rojas said the item is a request for approval of a CUP and design review permit to expand an existing Mexican Restaurant located at 1049 23rd Street. He described the new components of an enclosed barbeque grill and patio for outdoor seating on an undeveloped parcel adjacent to the restaurant, and a new parking lot on an undeveloped parcel on the southeastern corner of 23rd Street and Humphrey Avenue.

The Planning Commission considered the item on September 3, 2009 and directed the applicant to meet with the Belding Woods and North and East neighborhood councils, and have the project reviewed by the Design Review Board prior to returning to the Commission. The

Commission also requested staff obtain a police report to provide insight into the crime level and calls for service in the surrounding area.

According to the applicant, Mr. Rojas said he has met with neighborhood councils and has received positive feedback from the application. The Design Review Board considered the proposed design on March 10, 2010 and recommended approval subject to conditions of approval. The police report is attached to the staff report and staff reviewed it and it did not appear any of the incidents were related to 1049 23rd Street. He said the project applicant is present with his design team, who could review the project and issues from neighbors related to noise, safety and air emissions from the project.

He noted that residents were concerned that noise would worsen with the addition of the outdoor patio. Staff recommends the following conditions be added to mitigate noise concerns: 1) The restaurant's hours of operation be limited from Sunday through Thursday from 9:00 a.m. to 10:00 p.m., and Friday and Saturday from 9:00 a.m. to 12:00 midnight; 2) the patio hours of operation be limited to 9:00 a.m. to 9:00 p.m. daily; and 3) live entertainment be prohibited in and outside the restaurant at all times. The other condition was that seating for the indoor restaurant be limited to 20 seats maximum capacity and outdoor seating be limited to 32 maximum seating capacity. He said this relates to parking that is being provided.

Regarding safety, at the last meeting the Planning Commission, residents had complained there was public drunkenness and fighting during late night alcohol service, and staff recommends that the ABC license be limited to a Type 41 on sale beer and wine license and that alcohol service in the restaurant and patio stop one hour prior to the respective closing times. The other requirement for safety is that the parking and patio area be equipped with automatic sensors for lighting from dusk until dawn.

Lastly, residents have complained from smoke emissions from the unenclosed barbecue grill area that the applicant has been operating. Although emissions are exempt from the BAAQMD's permitting requirements, the applicant is proposing to enclose the barbecue grill area and equip it with an enclosure and commercial grade range, hood and air filtration unit. Staff reviewed the specifications which should dramatically reduce emissions from the grill activities.

Mr. Rojas summarized that the project conforms to the zoning district's lot size, intensity, height, setbacks, landscape and parking standards. The use is unique proposed for 23rd Street which will end up being a plaza related to a restaurant, which should make for a great eating experience. The applicant has been collaborative with staff in agreeing on conditions of approval and has agreed to conditions and limiting hours of operation. Currently, he operates past midnight on certain days and he is forfeiting this to receive approval for the grill enclosure and patio area proposed.

Chair Finlay noted she requested removal of the item from the Consent Calendar, as she was concerned about the over splash of lighting on the abutting residential premises for the patio. She also wanted to know the operation of the gate at the front of the patio facing the street. She also realizes conditions are far more restrictive and they would not be present without cooperation by the applicant.

Cesar Segura, applicant, Richmond, said he wants to offer a good restaurant for residents at an economical price.

Rafael Madrigal, Richmond, designer, said that in regards to any incidents that may have occurred, Mr. Segura has many customers and to be a good neighbor, he has hired a security guard to ensure the area, patio and parking lot be a safe and quiet zone for neighbors. He has agreed to all conditions and the overwhelming majority of sales come from food sales and not alcohol. He also sells fresh squeezed fruit juices as well. Regarding smoke emissions, Mr. Segura will install a new hood which will alleviate emissions significantly. He emphasized that the applicant wants to be a good neighbor, said the plans for 23rd Street fall directly in line with outdoor dining, patios, and a welcoming environment which would bring people to the City to shop and eat at local restaurants.

Hector Lopez, Richmond, referred to the gate at the front of the property, and said they will swing inward from standing on the 23rd Street sidewalk, and the opening is about 10 feet wide.

Chair Finlay said her concern involves emergencies that may occur where people may need to exit the patio. If the patio is full, they would only have one doorway with which to escape. Mr. Lopez said there would be waiters who will seat customers and a random customer will not be able to enter the patio area without greeting the restaurant staff.

Mr. Thompson said one concern may be with alcohol control. ABC may require a specific route into the restaurant, and having the gate open would allow anyone able to sit down and consume alcohol without a real check. He said possibly the gates could swing outward to the street and remain locked at all times. Chair Finlay believed this to be more amenable.

Mr. Mitchell stated assuming the Commission approves the use, the exit issues would be addressed by the Fire Department and entrance issues and requirements would be addressed by the ABC. It would operate like any other patio restaurant according to rules governing flow of outdoor customers and operation.

Chair Finlay said she did not see a condition stating this for the Fire Department, and Mr. Mitchell said the condition would normally appear with the Fire Department's normal 15 conditions. He said the Commission could specifically state the condition that the Fire Department must approve plans.

Secretary Duncan formulated a condition, which states, "The Fire Department must approve plans subsequent to CUP approval." Mr. Privat agreed with the proposed condition, and also noted that the ABC is already covered in Condition 8.

Mr. Lopez also noted that the light poles proposed are limited to a certain height required by the Planning Department. The extent of lighting shall be limited to the patio area and will not affect neighbors at all. Chair Finlay also confirmed lighting faces downward.

Public Comments:

Leonor Caribajal, Richmond, (through English interpretation) said her main concerns involve safety. She is concerned that the restaurant has late hours of operation and starting at 10:00 p.m. on Fridays, Saturdays, and Sundays. She said they have loud music in the restaurant that is very loud and disturbs the neighborhood; that when people exit at 1:00 a.m., they are very rowdy and loud, honk their horns, and yell and scream. She is also concerned that with the expansion of the use, these problems will worsen, especially on 23rd Street where there has been an increase in prostitution where she and her friends have often found condoms on the floor. She also said the restaurant actually sells alcohol and also voiced concern about air

emissions from the grill, stating that the smoke is so thick that it extends about two blocks from where they are grilling, which impacts people's health.

Chair Finlay asked that Mr. Rojas also provide a Spanish interpretation back to Ms. Caribajal in order for her to understand the disposition of the item and any additional conditions imposed on the applicant.

Commissioner Lee questioned where the speaker lives relative to the restaurant, and Mr. Rojas confirmed she lives about one half-block southwest of the restaurant.

Margaret Aguilar, Richmond, said when she visited her sister's house, it was quiet with very nice neighbors, but now it is terrible with lots of smoke. Her sister must close their house up because of the smoke.

Chair Finlay confirmed with Mr. Rojas that Ms. Aguilar is the previous speaker's sister.

Rebuttal/Applicant:

Cesar Segura, applicant, said they have worked with Mr. Rojas for over a year and they want to be a good neighbor so they have no complaints. They want to minimize smoke and are working with the community to minimize smoke.

Rafael Madrigal, noted that the gate was discussed by the Design Review Board, who asked that the gate open inwards, which is counter to the Commission's decision. Chair Finlay said her biggest concern was for safety and the Fire Department will have the last word on the gate's swinging inward or outward.

Rebuttal/Opponent:

Leonor Caribajal, Richmond, (through English interpretation), said one of her neighbors had gone to the restaurant with complaints of noise one night, which was called to their attention but not addressed. She is concerned that even with restrictions, the applicant states they will comply but this may not necessarily occur.

The public hearing was closed.

Secretary Duncan said he thinks Mr. Rojas has gone to great lengths to answer questions of the neighbors. He thinks the issues of light and smoke has been addressed and solves. Unfortunately, he thinks it is difficult to regulate people's behavior, and I think the hours of operation should be tried out to determine whether they work. It is admirable that the applicant has hired a security guard, as well as a gate and a restaurant and he thinks everybody has made a good faith effort to make it work and would support approval.

Chair Finlay asked Mr. Rojas to address conditions with the opponent which relate to opponents, and Mr. Rojas questioned the opponents as to their understanding of the conditions which the applicant must abide by.

Chair Finlay reiterated to the applicant that If complaints are received from neighbors because conditions have not been followed, the Commission has the right to rescind the CUP. If alcohol is being dispensed at this establishment because it is not supposed to be and this can be verified, neighbors have a right to report the owners to ABC who will conduct an investigation

and possibly terminate or withdraw their license. The Commission will also be able to take action and she hoped this would not occur.

Mr. Rojas summarized his presentation and recommended approval of the request.

Vice Chair Lee reiterated the previous comments of Secretary Duncan, felt the situation was challenging, felt the owner was pioneering in revitalization of 23rd Street and said it is incumbent on the owner/applicant to ensure they have proper security, be a good neighbor, and be that first business to bring a good dining experience to 23rd Street. He very much echoed Chair Finlay's comments regarding complaints which would lead to rescinding of the CUP.

ACTION: It was M/S (Duncan/Lee) that the Planning Commission approve the Conditional Use Permit and Design Review Permit to expand restaurant and approve PLN 09-054, including the four conditional use findings, the four findings associated with the design review permit, and incorporating specific project conditions 1-14, and standard conditions 5-28 with the additional condition 29 to read, "the Fire Department must approve plans subsequent to conditional use permit approval and recommended changes shall be incorporated into the plans;" unanimously approved.

4. PLN 10-023: Taqueria Perla - PUBLIC HEARING to consider a Conditional Use Permit to operate a new mobile restaurant at 3700 Macdonald Ave. (APN: 517-330-002). C-2, General Commercial District. Gianoli Bonnie, owner; Maria Arechiga, applicant. Planner: Hector Rojas. Tentative Recommendation: Conditional Approval

Mr. Rojas gave a brief staff report, request for Planning Commission approval of a Conditional Use Permit to operate a taco truck at 3700 Macdonald Avenue, with proposed hours of operation from 9:00 a.m. to 9:00 p.m. daily. He described site conditions, adjacent uses and their hours of operation, stating there is an existing outdoor vendor selling fresh fruit and vegetables daily. The applicant proposes to modify the existing driveway curb cut to add additional parking spaces to meet the requirement, and an entrance would be created from Macdonald Avenue and an exit on 37th Street.

He said the main issue is that there is an existing outdoor vendor on site, and the City's ordinance requires there be a 300 foot distance between vendors. One other condition included was that the existing fruits and vegetables truck be relocated at another site or cease to operate. The fruits and vegetable truck has no conditional use permit and most likely did not obtain one prior to the outdoor vendor ordinance. The property owner was contacted who was not in agreement with the condition, and staff would recommend that unless the other outdoor vendor is moved to another site or cease operations, this request not go forward as proposed.

Mr. Rojas noted there were two speakers; the applicant, Maria Arechiga and Rodolfo Saldana, business owner of the existing auto shop on the site.

Maria Arechiga, applicant, (as translated by Mr. Rojas in English), Vallejo, said she is the vendor for the taco truck applying for a Conditional Use Permit. She would be selling hot tacos and burritos and does not understand why at this point in time someone would be required to move in order for her to be at the location. She did not understand why the permit would not be approved if she was selling one type of food and the other vendor was selling vegetables, and Mr. Rojas explained to her that these types of uses are required to have a certain distance between them, which the applicant understood.

Vice Chair Lee said on the agenda report, the applicant's address is listed as Walnut Creek. Mr. Rojas asked the applicant in Spanish and he noted it must have been his mistake. He confirmed with the applicant that she owns the taco truck.

Public Comments:

Rodolfo Saldana, Hercules, said he has an auto repair business at 2700 Macdonald Avenue, said the vendor often sells oranges only and cherries and strawberries during a few months of the year. He said Ms. Arechiga indicated that she wants to put a taco truck on the property. He indicated it was not very busy but now it is and he hoped the City would approve her request and help both owners and their families who work very hard. He said he did not feel comfortable removing those people who were there first to bring in another person, and the applicant has spent almost \$900 on plans and an application.

Rafael Madrigal, Richmond, said he supports the application. He said the applicant has very strong ties to the City of Richmond with her family and her brothers have the longest running taco trucks which are very established in the City of Richmond, which support the Food Banks and churches. He supports her as following all regulations as exemplified by her family.

Naomi Williams, Richmond, President of the Pullman Neighborhood Council, said the location of where the taco truck is proposed to be located is adjacent to St. John's Missionary Baptist Church administrative building. She questioned whether the truck would remain overnight, questioned whether it would have food in it, and if so, she asked what would be done with garbage as there are roaches, feral cats, and rats in the area. She said the food truck comes in the mornings and leaves in the evening and is not there overnight. She acknowledged they do not have a permit; however, no food vendors in Richmond have permits. If the truck stays overnight, she is concerned because of the adjacent business and the probability for rats, rodents, and feral cats.

Mr. Rojas said the outdoor vendor ordinance requires that the taco trucks or mobile vending units be removed from the site daily after hours of operation and that they be stored at a commissary. This would be required if the application was approved. Regarding trash, the taco truck proposes to place 2, 32-gallon garbage cans on site which would be taken from the site each day with the truck.

Rebuttal/Applicant: The applicant waived a rebuttal.

Secretary Duncan said if the presence of the food vendor on site predates the vendor truck ordinance, he asked if this would paramount to an existing non-conforming use. Mr. Rojas said yes; however, the City's non-conforming provisions in the ordinance require that an existing non-conforming use on a site not be expanded upon. Therefore, if the Commission takes this as an expansion of a non-conforming use, it would not be allowed.

Chair Finlay said she does not see whether or not the fruit vendor has a license as the primary issue here. She felt the primary issue is the space between the two operations, proliferation, and if allowed, there would need to be a variance request. If multiple users are allowed on one site, the Commission sets the precedent. She did not want to discard the ordinance after working on it so many years.

Secretary Duncan questioned if the owner would be willing to withdraw the application, and questioned other options such as deny without prejudice, or something else. Chair Finlay stated the Commission can deny, it can be withdrawn, or the Commission can hold the item over and provide the owner an opportunity to work on a solution or understanding as to what his options are.

Vice Chair Lee said he agrees with Ms. Williams and questioned how many other fruit vendors have permits. There are many mobile vendors in the City who also do not have permits, and to disrupt something that is basically functional that works with the applicants and works for the owner with the technicality that they do not have a permit is bogus given the fact that the City does not pursue those who do not ask permission. Until the City has better enforcement on those who do not have permits and do not ask, he felt it did not make rational sense to disturb this operation as to whether the fruit vendor stays on site or not.

Mr. Rojas said the fact that the fruit vendor is there is not the only reason staff would recommend this not move forward. The other issue is parking. Parking is limited and is under-parked now. The existing auto shop requires a total of 9 spaces. The applicant is actually adding 2 spaces by narrowing one of the driveways and allowing for adjacent parking. Counting the taco truck and the auto repair shop's parking requirements it provides a total of 10 off street parking spaces, which is what the plan proposes. Unfortunately, there is the fruit truck. He said the ordinance does not specifically define fruit trucks require parking, but one could make the argument that at the minimum, one parking space would be required for such a use and the ordinance does not require that a parking requirement for a site be set by the additional of the individual parking requirements for individual uses on site.

Vice Chair Lee confirmed that the fruit truck is not taking up a parking space; however, Mr. Rojas would feel more comfortable looking into the code and working with senior staff to determine whether there is a parking requirement for a fruit truck, as he was not sure there was one given the size of the truck. However, one could argue that the fruit truck requires a parking space given the fact that the taco truck requires parking. However, he has not looked at this.

Chair Finlay said she does not see it as a permit issue at all; she sees it as a proliferation issue. She said the City is trying to have the trucks as incubators for businesses that actually go into the hard space because then there is almost an unfair stigma attached to opening a shop because one brings with them the responsibility of rent, insurance and other things that do not go along with many truck businesses.

She restated the options of continuing the hearing for one month to provide the operator a chance to consider his options, to deny the request, or to allow a withdrawal.

Vice Chair Lee said he agrees with Chair Finlay in terms of the principle of mobile vendors. He thinks to some extent it is unfair to brick and mortar businesses that they must compete against. Two applicants have restroom facilities, which really do not meet health standards like some other businesses, but he thinks it is completely unfair to come down hard on those who do try to comply and work through the proper system when the City makes no efforts to curtail the operation of those who come in from outside the City and not tell the City. Until the City takes on the responsibility of ensuring everyone plays by the rules, he did not think it was fair to make the applicant live by the absolute letter of the law.

Chair Finlay asked if abatements were done by the City for unlicensed taco trucks. Mr. Rojas said yes, but a lot of time code enforcement does not go out on a daily basis to check each

truck they see, and often it takes complaints from the public. He said Vice Chair Lee informed him that there was a taco truck at the corner of Canal and Cutting Boulevard, and he checked to see if they had a permit, which they did not. He then directly communicated with code enforcement, and the Commission will most likely be hearing this item in the future.

Secretary Duncan said he concurs with Vice Chair Lee's about fairness; however, the Commission must concentrate on this application and he is under the impression that the City has strict enforcement with the 300 foot rule. If the owner is not willing to give up one or the other of the sites, the obvious way out of this is to deny due to the ordinance. On the other hand, the Commission could ask the owner to make a decision over the next month as to whether the fruit vendor goes or the taco truck withdraws the application. However, he felt the Commission was obligated in enforcing the 300 feet, and theoretically taco trucks could locate bumper to bumper. He said he was interested in putting the onus on the owner to make a decision, and wondered if the applicant would agree to a continuance.

Mr. Rojas then conveyed this information to the applicant in Spanish. Mr. Saldana voiced concern about the applicant spending so much money on plans, but she insisted, and he did not feel comfortable telling the fruit vendor to vacate the premises.

Vice Chair Lee said he wanted to make a motion to approve the request and exclude Condition 6. Chair Finlay said if this were the case, a variance would be needed. Mr. Privat agreed, but the Commission could revise the conditional use permit today, but the real concern is the notice on the agenda, as it was not noticed as a variance and members of the public would not be given a chance to speak on this. The item would have to be re-agendized and the applicant would also need to apply for a variance.

Vice Chair Lee questioned if the ordinance states there cannot be more than one licensed vendor within 300 feet, or did it say, "vendor" period. Mr. Rojas stated that the ordinance requires a 300 foot distance between these types of uses. The distance is measured from property line to property line. Vice Chair Lee said the ordinance states "licensed vendors" and therefore, he did not feel a variance would be needed. Mr. Rojas said this was discussed with the non-conforming issue; to add onto the intensity of uses on the site would have the effect of expanding the non-conformity, although you are not adding onto the space of the fruit and vegetable vendor.

MOTION: Vice Chair Lee made a motion to approve PLN 10-023 and delete Condition number 6. There was no second and the motion died.

Commissioner Duncan questioned if the applicant would consider withdrawing the application. Mr. Rojas posed this question to the applicant in Spanish, and Mr. Rojas said the applicant feels that staff should have told her there was already a vendor operating at the site and that it was not possible to get to an approval on this site, given the ordinance's 300 foot rule. He said she is absolutely right; she came to the public counter and spoke to different planners on different occasions and asked if the site was eligible to put a taco truck on, and multiple planners told her it would be possible to do this. Over the telephone, when Mr. Rojas found out about the food and vegetable truck, he alerted her of the rules which requires a 300 foot distance between the uses. Her designer drafted up a plan which was reviewed by planners and since the truck has no permit and was not in the database so staff had no way of knowing it was there until a site visit was conducted.

Mr. Rojas said when he did a site visit, the application had been processed, money had been taken and plans developed. So, he agrees it should not have gotten to this point, but without specific plans outlining every inch of the site, there would be no way of telling her at the counter it would be possible, and he understands her frustrations.

Chair Finlay questioned whether staff starts an application without a site visit. Mr. Rojas said they take in the application and then go out to the site, but by then, the plan was developed, money was taken, and he scheduled the application for review by the Commission. When he did his site visit, he found out about the existing fruit stand. He hoped that at some point in the future, a satellite Google map could be used, but the truck was not noticed initially.

Mr. Mitchell stated there is an implication here that the fruit vendor has some sort of vested rights, but does not. The land owner is operating an auto repair business has made a decision to bring a fruit vendor on his site. The Commission has no obligation to vest that fruit vendor. Secretary Duncan is correct--the property owner needs to make a decision, and the City must not create circumstances so he can have two tenants on the site who are not consistent with the business that the site is supposed to be supporting, which is auto repair.

Vice Chair Lee said he thinks the issue is not whether the applicant could operate her business on site, but is when she came to the counter, based upon what was stated, she continued to pursue her application. If she had understood that the property owner would have to make a choice when she first came to the counter, she might have had a more informed decision if she had known about options.

Vice Chair Lee questioned if the fruit vendor grandfathered in and legal. Mr. Privat said if the City wanted to pursue a code enforcement action to have the fruit vendor removed, they could, and the fact that he was there before adoption of the ordinance does not apply at all.

Secretary Duncan said the reason he was leaning towards denial without prejudice is that it would preclude the taco truck from being there, but the difference between denial without prejudice and denial is that they get their fees back. Mr. Privat said they do not get fees back, but if they re-apply, they do not have to pay fees again. Also, there is a six month limit to re-applying which is not triggered with denial without prejudice and the applicant can re-apply the next day.

Commissioner Lane questioned if they chose to re-apply for a different site, would they not have to pay within the six months. Mr. Privat noted that if at a future date a new application on the same matter is initiated by the same applicant, no fee shall be assessed, so it depends on how the planning department interprets this.

Chair Finlay said the first question is, would it be the same site. If the owner of the same site, it would not be the same site, and she felt it would become mute from her perspective.

The public hearing was closed.

ACTION: It was M/S (Duncan/Finlay) to deny the application. Vote: (3-1-3) Ayes: Duncan, Finlay and Lane; Noes: Lee; Absent: Beckles, Rao and Teltschick-Fall

COMMISSION BUSINESS

6. Reports of Officers, Commissioners and Staff

Mr. Mitchell reported that the Council will be discussing the budget at their next meeting, and a good deal of planning's time has been spent looking at the economy and costs in an effort to arrive at a point where the economy will pick up. Indicators are starting to look better, although with a lag time, staff was still focusing on shrinkage. Therefore, this would determine what sort of schedule the Commission would have for the balance of the year.

Chair Finlay referred to Point Malady and asked if the Council still has made the determination to have a decision by May 20, 2010. Mr. Mitchell said he had no specific update and will forward something to Chair Finlay.

Commissioner Lane asked for an update on the General Plan. Mr. Mitchell said staff is focusing now on lengthy comments submitted relative to the Health and Wellness Element of the General Plan. Staff has met with members of the California Endowment and will be meeting with the County Health Department in an effort to arrive at compromise language. This then will be reflected out in policies in other elements.

Chair Finlay reported that she and Commissioner Rao will be termed out on June 30, 2010 and she will be forming a nomination committee shortly. The slate is announced in June, and the election for new officers takes place in July. She will indicate to Commissioners who she would like on the nomination committee. Because she and Commissioner Rao are termed off, Vice Chair Lee will most likely run the July meeting. Mr. Privat pointed out that Commissioners continue until they are replaced, and he will review the ordinance and will follow-up with Chair Finlay.

Vice Chair Lee noted that his term is over as well, and he may not be re-appointed either. This also makes it difficult to form a nominating committee. Chair Finlay asked Mr. Privat to conduct research and check with the Mayor's Office, as well.

Chair Finlay disclosed that she attended the ABAG Conference on April 22, 2010, along with Commissioner Teltschick-Fall and Commissioner Lane. The subject of the meeting was SB 375 which was very instructive. She did not know that the City of Richmond Civic Center Complex was highlighted for its green design and art attributes.

Adjournment

The meeting was adjourned at 9:27 p.m.