

**PLANNING COMMISSION MEETING**  
**COUNCIL CHAMBERS, RICHMOND CITY HALL**  
1401 Marina Way South, Richmond, CA  
July 7, 2011  
6:30 p.m.

**COMMISSION MEMBERS**

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| Charles Duncan, Chair | Sheryl Lane, Vice Chair |
| Jeff Lee, Secretary   | Carol Teltschick-Fall   |
| Ben Choi              | Andrés Soto             |
| Roberto Reyes         |                         |

The meeting was called to order by Chair Duncan at 6:30 p.m.

Vice Chair Lane led in the Pledge of Allegiance.

**ROLL CALL**

**Present:** Chair Duncan, Vice Chair Lane; Secretary Lee, and Commissioner Choi and Soto

**Absent:** Commissioners Reyes and Teltschick-Fall

**INTRODUCTIONS**

**Staff Present:** Lamont Thompson, Jonelyn Whales, and Carlos Privat

**MINUTES**

April 21, 2011:

Secretary Lee requested staff review and expand upon the sentence on Page 5 as follows: *“Secretary Lee questioned and briefly discussed staff’s strategy as to why the item was going to the City Council prior to it being re-reviewed by the Planning Commission.”*

Secretary Lee questioned whether the Commission will receive an answer regarding the North Shore and the 52-page document submitted as reflected on Page 1: *“Chair Duncan confirmed with Mr. Privat that the Commission will have an answer sometime in June and possibly staff’s analysis for the staff report.”* Mr. Privat responded that the matter was under review and analysis, and the Commission will know when the analysis is complete.

Chair Duncan requested amendment to the following sentence on Page 7: *“Commissioner Soto asked to speak as a school board member and his thoughts about Richmond annexing Montalvin Manor.”*

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| <b>ACTION: It was M/S (Reyes/Lane) to approve the minutes of April 21, 2011, as amended; carried unanimously.</b> |
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## **CONSENT CALENDAR**

Chair Duncan noted the Consent Calendar consists of Items 1, 2 and 3. He asked if there were items to be removed or added.

Mr. Thompson presented a substitute resolution for Item 1 to the Commission, stating that rather than requiring 1 covered parking space on site, there should be 1 covered parking space per dwelling, for a total of 2 spaces.

Secretary Lee requested removing Item 2 from the Consent Calendar for clarification purposes.

**ACTION: It was M/S (Soto/Lane) to approve Consent Calendar Items 1 and 3, as amended (Resolution 11-14); unanimously approved.**

### **Consent Calendar Items Approved:**

- 1. PLN10-225: Mill Residence** - PUBLIC HEARING to consider a Conditional Use Permit approval that would allow the creation of a Planned Residential Group. The applicant proposes to convert the two existing residences on site to a planned Residential Group, which would allow the 450 +/- square foot beach house dwelling situated on the lower portion of the site to be expanded by 990+/- square feet, totaling 1,440 +/- square feet at 875 Ocean Ave. (APN: 558-233-011). SFR-2, Single Family, Very Low Density Residential District. Don Mill, owner/applicant. Planner: Lamont Thompson. Tentative Recommendation: Conditional Approval.
- 3. PLN11-055: Southwest Concessions** - PUBLIC HEARING to consider a proposal for Design Review Permit and Conditional Use Permit for a new 347 square-foot concession stand located near the entrance of the Richmond Home Depot at 11939 San Pablo Ave. (APN: 513-340-052). C-2, General Commercial District. Adachi Florist & Nursery, owner; Southwest Concessions Inc., applicant. Planner: Hector Rojas. Tentative Recommendation: Conditional Approval

Chair Duncan provided an overview of meeting procedures for speaker registration, public comment and public hearing functions. He said items approved by the Commission may be appealed in writing to the City Clerk by Monday, June 18, 2011, by 5:00 p.m. and as needed, announced the appeal process after each affected item.

### **Items Removed from the Consent Calendar:**

- 2. PLN11-091: Western Drive Planned Residential Group for Two Single-Family Units** - PUBLIC HEARING to consider a Conditional Use Permit for a Planned Residential Group consisting of two single-family residences on a property previously subdivided into three parcels located at 125-127 Western Drive (APNs: 558-020-016-9, 558-020-017-7, & 558-020-018-5). The project is exempt from CEQA pursuant to CEQA Guidelines Section 15303(d) conversion of small structures. If the CUP is approved, the applicant will seek to have the subdivision revert to a single parcel. SFR-2, Single-Family, Very Low Density Residential District. John Knox, owner; Kelton Dissel-John Maniscalco Architects, applicant. Planner: Jonelyn Whales. Tentative Recommendation: Conditional Approval.

Ms. Whales gave the staff report and a description of the request. She noted that the current owner requests combining the lot and revert it back to one lot, and build 2 single family dwellings. Because of the height of the structures, the Planned Residential Group (PRG) was a better fit than the SFR-2 designation. However, staff recommends the CUP be contingent on the design review permit only because of the fact that it is on an already entitled lot. The resolution recommending approval requests that the Commission place a contingency on the actual approval for the owner to obtain the design review permit in the future. Therefore, the owner could proceed with an entitled project.

Secretary Lee pointed out that the project entitled is not this project. Ms. Whales responded correct, the previous project has planning entitlements and the current project does not. Secretary Lee referred to Mr. Thompson's approval on Item 'D' which states the building area on the approved plan is a condition of the use permit and shall not be altered without permission of the Commission. Ms. Whales responded that staff typically places specific conditions on the design review permit itself, but such an amendment could be made to the Planning Commission resolution. She clarified it would not return to the Commission, but would instead go to the City Council for reversal of the acreage transferring the 3 lots back to 1 parcel.

Commissioner Soto confirmed with Ms. Whales that there are currently 4 structures. Ms. Whales then deferred the question to the applicant as to whether or not the residences were occupied and what would happen with the tenant(s).

John Knox, applicant, said currently there is a 3-lot subdivision and 4 buildings which do not conform to the 3 lots because the property was subdivided and the old buildings were never demolished. Of those 4 buildings, 1 is occupied. There are 2 rental units; his son lives in 1 building, another man lives in one on a month-to-month tenancy, and he was apprised of the fact they would be demolishing the buildings.

Mr. Knox described their plan which calls for merging a 3-lot subdivision back to a single lot, constructing 2 residences which will be owned by his family. They do not want to take the final action to merge the subdivision until they have approval for their new plans. Otherwise, they could be left with nothing. They expect to go to the DRB, they met with staff and a DRB subcommittee, which provided extensive schematic design information for the project. They also have provided their plans to the neighborhood council, neighbors, which all of them had no objections to the project.

The resolution before the Commission references the site plan attached as a footprint for development. It states that the allowed variations from the SFR-2 include whatever is needed to allow that site plan to comply with setbacks, yard requirements, and foot prints, heights, parking, and zoning requirements. He said without a Planned Residential Group (PRG), if there are 2 lots they would need separate access and sets of calculations to meet these regulations. They are requesting approval based on the site plan and the fact that the DRB must approve their final development plan before the project commences.

Mr. Knox clarified with Secretary Lee that they will be before the DRB in August or September after they hire an engineer to complete a grading plan. Secretary Lee asked and confirmed that heights are covered in the resolution and that height limits for Parcels A, B and C should be included in the conditions referenced in Condition D, so the Commission does not need to review it after the DRB.

Mr. Privat pointed out that paragraph 4 refers to both height limits and the view corridor requirements. He asked if these should be called out, as well. Secretary Lee stated no, but it appears there is a view corridor, and he asked for more detail on this. Mr. Knox replied this was the reasoning for cross-referencing the other resolution because it is laid out in detail with figures. There are two view corridors required as part of this subdivision and this resolution requires them to comply with all the same view restrictions. Secretary Lee confirmed that all those on pages 8 and 9 also apply to the current project, which Mr. Privat noted are incorporated pursuant to paragraph 4. Mr. Knox added they are providing a dramatically broader view corridor than what would have been required by the subdivision.

Chair Duncan stated that in 2005, the applicant wrote a letter suggesting conditions of approval for the previous owner that required public access to the beach. Mr. Knox said he read this letter prior to the full hearing on the project and clarified it is not a requirement of the project. He said the City Council and Planning Commission agreed that public access is not required by BCDC which has been confirmed. There is no facility in that location to allow the beach to become a public beach, i.e., no bathrooms, garbage, and parking. The City Council made findings that there is public access within 600 to 700 feet at Keller's Beach. Secondly, there were many neighborhood concerns with the granting of public access. He requested the City look at it in 2005 because the Code requires it be studied, which he said did occur.

Secretary Lee noted that in the conditions inherited with the project it states "prior to development of the first parcel, permit approval shall be received from BCDC for the location of the residences. Any improvements, easements or other conditions..." Mr. Knox agreed that BCDC approval will be needed and they held a meeting with senior staff there. They were shown the same schematic designs, were very pleased with the project, and encouraged him to file an application. However, BCDC is the last reviewing body and they cannot achieve a formal approval until City approvals are in place.

Chair Duncan verified there were no public speakers, and the public hearing was closed.

Mr. Privat pointed out the absence of a standard indemnity provision in the resolution which is needed in case the matter gets challenged. Mr. Thompson clarified with Chair Duncan that the provision will be added.

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| <b>ACTION: It was M/S (Lee/Soto) to approve PLN11-091, as amended, by inserting amendments in Condition D; unanimously approved.</b> |
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### **NEW ITEMS**

- 4. PLN10-204: Central Avenue Automated Carwash Facility** - PUBLIC HEARING to consider a CEQA exemption for Existing Facilities and a Conditional Use Permit for Automotive Services for an automated Car Wash located at 5620 Central Avenue (APN: 510-053-032). C-3, Regional Commercial District. Gino Bartalotti, Jr., owner/applicant. Planner: Jonelyn Whales.

Ms. Whales gave the staff report and description of the project which is to consider a CEQA categorical exemption for an existing facility and consider approval of a Conditional Use Permit (CUP) to allow an automated car wash. She reviewed the purpose of CEQA and said staff has been working with the applicant over the past 13 months. Staff believes there are some potential CEQA impacts specifically for aesthetics, traffic and noise for which studies have been

done, but not biological and hydrological. As far as a categorical exemption, the one used for holding over the public hearing in December 2010 was Section 15301 Class 1, which is defined as "additions to existing facilities." Staff feels the key consideration is whether the project involves expansion of an existing use. This was done in error; nevertheless, the applicant believes that this exemption should be used.

Ms. Whales provided photographs of existing car washes in the City; the Richmond Car Wash on Macdonald Avenue which was exempt from CEQA based on the fact it was an existing station that the owner wanted to transfer to a car wash; an AM/PM Mini Mart store and car wash on Waverly Road which had an approved CUP and design review permit in 2000 and part of a larger EIR developed for the residential and mixed uses surrounding the site; the Chevron Car Wash on Hilltop Mall Road which had an approved CUP and design review permit and was exempt because the site would remain as a gas station; and the Bubbles Car Wash which had a gasoline station prior to receiving its design review permit for the car wash itself.

Ms. Whales then presented the vicinity map, site photographs, and architectural elevations of the proposed car wash. She noted the project will be reviewed by the DRB on July 13, 2011 and the applicant has met with the DRB subcommittee to revise the proposed drawings. The site is in the C-3 regional commercial zone district which she said should provide a wide range of retail and wholesale establishments geared toward pedestrian shopping. Conditional use categories include auto repairs within a completely enclosed building which includes automotive dealers or similar uses. She explained that prior to 1994 the City had a classification in the zoning ordinance which spelled out auto laundry. The language was archaic, and during the update of the zoning ordinance this was removed and 'auto repairs within a completely enclosed building' replaced that category. In the past, staff has always processed car washes as conditional uses under the appropriate zoning districts.

Secretary Lee questioned whether or not the project would require CEQA if it did not require a CUP. Mr. Privat replied that CEQA is analyzed separately from the discretionary approval from the CUP, and Mr. Thompson added that every project must have a CEQA review.

Ms. Whales requested that the Commission direct staff as to whether or not it will categorically exempt the project from CEQA or, request the applicant provide an Initial Study/Mitigated Negative Declaration for staff review. If the project is deemed exempt, she asked that the CUP be approved for the project based upon findings in the staff report, and/or direct staff to return with a resolution on August 4, 2011 reflecting the Commission's decision. She added that a letter was received from the City of El Cerrito who performed a cursory review, and their recommendation is that the project should go through the environmental review process.

Vice Chair Lane said she read El Cerrito's letter as the project should not receive a categorical exemption because they feel it is based on transportation. Ms. Whales noted the project was also never peer reviewed and studies before the Commission were paid for by the applicant. Therefore, staff has done no outside consulting or peer reviews on the submitted analyses.

Secretary Lee questioned whether this implies that the only objection the City of El Cerrito has is traffic. Ms. Whales said she spoke with the senior planner who indicates there are many undisclosed impacts which he could not numerate at the time, and he would like some level of environmental review for disclosure. Mr. Privat explained such information can be obtained through an Initial Study. Also, the CUP question is not addressed unless a CEQA exemption is found tonight.

Mr. Thompson noted that an Initial Study would also help determine whether a project even rises to the level of whether or not it exceeds the categorical exemption threshold to go to the next level of environmental review.

Commissioner Soto said what he read is that for the Commission to say it is categorically exempt, one of the criteria is that it does not substantially change existing structures. Ms. Whales said this is correct. Mr. Privat noted that the Commission would specifically have to find that the project is negligible or does not expand an existing use at the time of its decision.

Gino Bartalotti, Jr., applicant, clarified for the Commission three different types of car washes; 1) a full service car wash done by employees of the car wash; 2) a self-service car wash that allows one to wash the exterior with a power wash wand; and 3) an express exterior car wash which is what they are proposing. Drivers pay a cashier, remain in the car and drive to the entrance of the tunnel with the car being pulled through and out by a conveyor.

Mr. Bartalotti pointed out that in the background section of the staff report, it states that the existing building will be completely demolished, which is not true. They will be using foundations and framing at the northeast edge of the footprint. Also, paragraph 2 states that the building was a one-story structure and they had built the second story, which is also not true. The original pictures of the building, when they bought it, shows there is a 2-story section to it. In addition, paragraph 3 states they received a stop work order from the City and they were exceeding the scope of the approved plans. The full set of construction drawings were stamped by the planning and building departments, the permit describes the scope of the work, and the engineer's report shows they did not exceed the scope.

Mr. Bartalotti described the proposal to reduce the 23,000 square foot footprint to approximately 4,692 square feet and use the northeast portion of the building pad. He pointed to an outline showing the use of the 4,692 square feet which fits within the existing envelope of the building itself. He said the façade of the proposed building is substantially the same as the original building and the building proposed in 2004. The only changes to the exterior appearance are a couple of modifications suggested by the DRB in the subcommittee meeting in December 2010 which consist of adding some brick veneer and changing the roof material from composition to standing seam metal.

They made a number of considerations in siting the car wash for traffic circulation. It is on a relatively large site for an express exterior car wash. The entrance tunnel is almost 90 feet away from Central Avenue which allows for a large staging area to minimize traffic impacts. They voluntarily provided a traffic study that demonstrates minimal impact. They voluntarily performed a sound study and met all noise restrictions for both the City of Richmond and El Cerrito. A future signal light may be installed at the corner on Central Avenue with the proposed street improvement project. They deliberately designed the project to leave a considerable amount of right-of-way there. They have a large landscaped area far and in excess of what is required; the project is green; they are proposing a sophisticated water reclamation system which will reclaim 60% to 80% of all water used; they will use biodegradable soaps; and, they voluntarily put in a bio swale to take care of all surface water.

When they met with the DRB in December 2010, 5 items were suggested. One being that they convert the proposed composition roof to standing seam metal; they consolidate the two-lane driveway configuration to one driveway to keep traffic away from the corner. This will also allow for a greater queuing of cars, and they suggested the use of metal halo lights and LEDs. The site is serviced by heavy power, large water service, ample sewer capacity and they need to do

nothing more from an infrastructure standpoint. Given all of the items he described, he feels they should be categorically exempt from CEQA guidelines under the section of existing facilities and/or infill development project.

Regarding the CUP, page 4, paragraph 2 of the staff report states that the zoning ordinance is silent on the appropriate areas to allow automated car washes. The Planning Department determined that the car wash was a use that should be classified under auto repair. Mr. Wasserman, his attorney, articulated their position that an automated car wash should be considered an auto related service which is allowed under the C-3 zoning. Further, C-3 zoning talks about automobile car wash, belt driven, which would suggest it is an anticipated use. In reference to the car washes described earlier by Ms. Whales, only two in Richmond are a conveyor-ized tunnel type; the Bubbles Car Wash and the Richmond Car Wash. The Bubbles Car Wash is most similar to his project. He said he also reviewed the planning file and found no use permit in the file. He requested a copy of the CUP from staff verbally as well as under the Public Records Act, to which none was received to date.

Ms. Whales noted that staff located the Certificate of Occupancy; however, she explained that the City offices have moved twice and staff was awaiting receipt of the files from an off-site location. She said a current DRB member who worked on the project recalls there was a CUP before they received their design review permit. Chair Duncan noted he was the Chair at that time, as well, in 2004.

Commissioner Soto questioned whether or not staff corresponded with the applicant to let them know the records search was underway, and Ms. Whales replied yes.

Commissioner Soto said the applicant indicated the existing foundation is going to be used and the front area would be substantially different. He asked if the applicant intends to demolish the existing building and rebuild the new front wall. Mr. Bartalotti said the foundation is only 6 years old and some of the walls were done in 2004 under the first permit. They are going to use all of the frontage and 30 feet of the easterly foundation. It will not be completely demolished, but anything left not included in the 4600 square feet will be demolished. Commissioner Soto said he understands the reasoning to maintain the foundation structure, but questioned the existing wall. Mr. Bartalotti confirmed that some of the framing will be retained.

Commissioner Soto said his other question is whether the project should be categorically exempt. The applicant provided the sound and traffic study in response to concerns, but there are other criteria the Commission must consider in its determination beyond those two areas, and there is no evidence anything has been done in this regard. He said the City of El Cerrito also has concerns about the developer-paid studies.

Mr. Bartalotti responded that they have considered the site and the two studies completed and submitted both outline the points of significance. He met with the senior planner at the City of El Cerrito three times after the letter was written whose major concerns were noise, traffic, and whether it would impact the Central Avenue/I-80 Improvement Project. The planner suggested consolidating the driveways into one and moving the ingress/egress further down.

Mr. Bartalotti said he also met with the Richmond Annex Neighborhood Council who unanimously approved it. They chose the expert firm of Fehr and Peers as their traffic consultant who also prepared the study for Caltrans which covered I-580, I-80, and Central Avenue to San Pablo Avenue. They hired Charles Salter to conduct the sound study and paid an additional amount to measure and provide site specific samples as opposed to working from

guidebooks. On May 3, 2011, he met with the senior planner of El Cerrito again, reviewed the studies with him. The planner indicated he never received a copy of anything from the City and indicated the need to receive a copy of the study showing it was received by the City of Richmond. Therefore, he submitted a copy of the staff report to the planner.

Commissioner Soto questioned the other CEQA items; hydrology and biological considerations that the City must take into consideration. Mr. Bartalotti questioned the existence of any biological concerns. Ms. Whales noted there is a creek adjacent to the property, and Mr. Bartalotti pointed out this is a concrete drainage canal and not a creek south of their location that touches on the Pacific East Mall. Ms. Whales said the City does not have this information and if the applicant goes through the environmental process, these facts would be disclosed.

Commissioner Soto asked if Mr. Bartalotti was opposed to having the hydrology and biological considerations peer reviewed as part of a CEQA process if they substantiate the process. Mr. Bartalotti said he did not believe they were subject to them, as they primarily qualify under two exemptions under 'existing structure' and 'infill'.

Secretary Lee asked what is involved in an Initial Study as far as time and money for the applicant. Mr. Bartalotti replied a couple of months' delay and deposit costs of \$20,000 which he feels are significant. He said that in speaking to someone who would develop the Initial Study, specific concerns are traffic and noise which have already been addressed. There are no other environmental issues on the site and he believes the request to be an "overkill".

Secretary Lee said if this was deemed to be a modification of the previously approved project, he asked if an Initial Study would be needed. Ms. Whales said from all the research staff has done to date regarding design review permits, it is still unclear as to what the previous project program was to be. Chair Duncan stated he does not remember in 2004 what the building program was to be as planned. Mr. Bartalotti said there were no tenants in the building and they were looking at a general commercial tenant with possible retail on the ground floor. They pulled a permit for a building core and shell. Chair Duncan confirmed that at the time, they did not plan to operate a car wash; however, Mr. Bartalotti noted that if a car wash tenant came to them, they would have looked at it. Chair Duncan said when one builds a core and shell, a car wash shell is very different from a storefront shell.

Chair Duncan questioned and confirmed with Ms. Whales that all permits or entitlements granted in 2004 had expired.

Vice Chair Lane acknowledged existing information from reputable firms on sound and traffic, questioned the process and what the environmental review would disclose. Ms. Whales replied that the applicant would place a deposit with the City for an Initial Study. The Initial Study can be conducted by staff at that time. The review is really a CEQA checklist; categories would be researched by staff and staff would disclose all possible impacts of aesthetics, biology, traffic, noise, hazards and hazardous materials, mineral resources, recreational land use, planning, geology, and air quality. It is time-consuming and not inclusive of CUP fees. However, this applicant requested a conditional use permit and design review permit. Staff discussed going further and looking at all of the environmental impacts of developing a 1.6 acre site for a 4600 square foot car wash from what is currently there now.

Vice Chair Lane questioned the timeline, and Ms. Whales replied that it depends upon the scope of the project. It may take 3-6 weeks for the car wash itself.

Vice Chair Lane questioned and confirmed the deposit amount was based upon cost recovery.

Commissioner Choi questioned more information on the infill exemption, and Mr. Privat deferred the question to Mr. Wasserman.

Secretary Lee said there are two ways in which the applicant would be relieved of the responsibility to do an Initial Study; one being riding on the coat tails on the previously approved project and the other being the Commission deeming one is not needed. Mr. Bartalotti agreed and said additionally, the infill exemption.

Mr. Privat noted the Commission is considering two possible exemptions. The one analyzed by staff is the 'existing use' exemption which is riding the coat tails of what is there now as existing. It includes the baseline today and then infill development, which staff has not yet analyzed. Regardless of whether there is an exemption, there is a possible exception that has been raised and articulated by the planner in El Cerrito. He said even if there is an exemption, if there is a possible environmental impact, staff would proceed with an Initial Study.

Chair Duncan questioned and confirmed with Ms. Whales there is no current use of the site; no plumbing, mechanical equipment and nothing built on the site.

Commissioner Soto questioned and confirmed with Ms. Whales that the planner in El Cerrito had not withdrawn his request of June 30, 2011 requesting that environmental review be conducted. He pointed out that the applicant cited a number of discrepancies between what was contained in the staff report and the actual situation, such as the second floor being added and whether or not a Stop Order was issued. Ms. Whales responded that this information came directly from public records for the 5620 Central Avenue property.

Mr. Bartalotti said this is absolutely not true of the property. He acknowledged a Stop Order was issued improperly, has a copy of the permit and stamped construction drawings, and the last record was that they illegally built the second story, but it has always been there. He explained that the engineer of record made a site visit and wrote a letter indicating they had never exceeded the scope of the work.

Zack Wasserman, attorney representing the applicant, said they are happy to be heard by the Commission as it has been very difficult to present the matter. There have been statements made that this applicant requested a CUP which is untrue. He was told he needed one. He has had numerous discussions with the City Attorney's Office, wrote a letter to Ms. Whales, Mr. Mitchell and Mr. Lindsay to indicate that the car wash use is permitted as a matter of right and needs no CUP. The discussion earlier was that it has been deemed an 'automotive repair'. On the face of this, it does not make sense. Express Car Wash is nothing like an 'automotive repair'. The Code as revised deleted 'auto laundry'. It refers to an auto wash/car wash in the parking requirements for this area, so it is envisioned as a potential use which is auto related and fully consistent with the general commercial uses permitted under both the zoning and the General Plan. They have actually proposed two separate resolutions so as to not hold over the matter and delay it further. The project was originally scheduled to be heard last December and at that time, it was labeled as categorically exempt from CEQA and it was for a CUP.

Mr. Wasserman said the first issue is whether a CUP is necessary and what CEQA implications are. If this is permitted as a matter of right as the original project was, it does not need a CUP and does not need CEQA review, just as the initial project did not have. He said one resolution

states it is permitted as a matter of right, and no CUP is necessary. They put this in a resolution form because Mr. Bartalotti is still willing to accept the conditions of staff.

The second resolution includes a CUP because the goal is to get the business up and running. It has been stalled for a number of years and for months with this particular use, and there is a legitimate need to push it forward.

Regarding the CEQA issue, if a CUP is required, there is no question CEQA is triggered. The other car washes, except for one which may be included in a larger EIR, were categorically exempt and several were exempt under the infill exemption. Therefore, there is no reason to treat this one differently to discriminate against this applicant.

Commissioner Soto asked to explain the infill exemption. Mr. Wasserman said it is his understanding that there have been projects in Richmond given this exemption. This was a modification to CEQA law done 6 years ago which states that if in an urban and developed area under a certain size, as part of the impetus to do infill in an urban area, it does not need an Initial Study. If there is something known about it, it could trigger something else, but he believes the infill exemption is appropriate to use in this situation.

Commissioner Choi questioned and confirmed that the infill exemption was discussed with both Ms. Whales and with Ms. Renfro of the City Attorney's Office. Commissioner Choi said he would like to see something done with the property, but the planning department has taken exception with Section 15301; the 'existing structure' exemption, and he asked if his client was aware of this some time ago. Mr. Wasserman said no; it has only come up in this staff report. Despite Mr. Bartalotti's efforts and his own, communications have not been productive or desirable. They have submitted information, have made requests for copies, and no response has been provided. They have also never received a written response from staff to their public records request. They believe there are three separate categorical exemptions under CEQA all or a portion of which would apply to the project; 1) infill; 2) the existing structure, and 3) relatively modest changes in order to rehabilitate and restore blight or that which is in a context not caused by environmental damage.

Commissioner Choi questioned how long and at what cost did the studies take relating to traffic and noise. Mr. Wasserman said they first hired the noise consultant in December 8, 2010 and the report was finished April 14, 2011. For the traffic study, Fehr and Peers was hired mid-November 2010 and the consultant forwarded the completed report within a month.

Secretary Lee questioned the difference as to whether the CUP is approved or not in how the project proceeds. Mr. Wasserman said legally there is a very significant difference. If no CUP is required, it is a permitted use as a matter of right and does not come before the Commission. There may be circumstances where it will go through design review and unless it is permitted outright and a very large project, CEQA does not come into play at all. He said frankly, if there is no basis to seek a CUP, he typically advises clients not to go in this direction. In this instance, partly because of the current process and because Mr. Bartalotti is fully willing to accept the conditions, if they could move this forward, they do not want to fuss over that distinction.

Secretary Lee recognized that the difficult part of going through a CUP is already imposed. Mr. Wasserman agreed and said they think everything the Commission should reasonably require if a CUP were required has been done and the project should be granted tonight.

Ms. Whales said with a CUP, the Commission is obliged to place conditions on the land use being permitted on the site. Without a CUP, there are no conditions. Mr. Wasserman said they agree with the conditions in place if the Commission prefers the CUP, but the findings would need to be made for a categorical exemption. Mr. Privat noted it is staff's analysis and recommendation that this is properly before the Commission as a CUP matter and not as a project approved as of right and subject to a ministerial permit over the counter. If the Commission thinks the project does not require a CUP, CEQA is not needed.

Secretary Lee said this is what he was trying to hear at the beginning of the meeting. If it does not require a CUP, CEQA is a mute issue. Mr. Privat said staff, however, believes the project does require a CUP.

#### Public Comments:

Garland Ellis, Vice President, Richmond Annex Neighborhood Council, said the Richmond Annex Neighborhood Council has spoken with the applicant and met with him on many occasions about the project. They had traffic and noise concerns at the onset. The applicant designed the project so as to reduce traffic. They helped the applicant re-design the ingress and egress, designed additional parking spaces, more queuing areas, and they are comfortable with the changes. At the onset, they wondered why a car wash was proposed but also could not determine another better project. The City of El Cerrito and Richmond want high density multi-story buildings in this area, and if this were to come in, it would worsen traffic and be noisy. With this project, such impacts will not occur and adversely affect the neighborhood. Regarding the letter from El Cerrito, the project is not in that city, and there have been many traffic studies for Central Avenue already for Measure J and for the proposed Kohl's project that was not realized. Most of the studies were done by Fehr and Peers. He finds it highly unusual that the City of El Cerrito, in the proposed Measure J project, wants to categorically exempt CEQA for their traffic change all along Central from Costco up to San Pablo. The City of Richmond is agreeing with this, yet, staff requires a traffic study for one small property in the middle of it.

Jerry Yoshida, Richmond Annex Neighborhood Council, noted traffic flow was not detailed in the staff report and he presented a handout to Commissioners which lists all categorical exemptions, what infill and existing development requires, and said there is no habitat. Regarding the traffic analysis, congestion is reduced through design of the project. They were concerned but wanted to ensure that traffic waiting to go into the project would not block traffic on Carlson Boulevard. They also suggested a combined ingress/egress to make the original plan safer, as there was a crest of a hill just before the 2 ingress egress points, and he supported approval of the project.

Chair Duncan asked for comments from the Commission and staff summation.

Commissioner Soto referred to the designation of a car wash being labeled as part of a broader category of auto repair versus auto services, and asked for the legislative intent of this designation. Mr. Privat deferred the question to Ms. Whales.

Ms. Whales said the designation is 'auto services completely within an enclosed building'. From the 1994 update to the zoning ordinance, many categories were dropped inadvertently which is unfortunate. However, at that time, the Planning Director would simply make the interpretation based on what planning had done in the past and correct it in the next update. The applicant brought up the fact that there is mention of a car wash for parking purposes, and this is what led staff to believe it was inadvertently omitted. She said as stated in the staff report, staff

determined the similar use made it fall under that category, and this is how all other car washes have been processed in the City over the last decade.

Secretary Lee questioned and confirmed that if staff were to call this an auto services use, it would require a CUP. In the regional commercial district zoning, there is a category referred to as 'auto service within a completely enclosed building conditionally permitted'. Staff would say there must be a building on the site to fall under this category, and logically, over the past 8 months, there could have been an Initial Study completed. However, Mr. Wasserman was called in earlier and another attorney was working on negotiations, as well. Associate City Attorney, Mary Renfro, is working with Mr. Wasserman regarding the public disclosure act, so it is pending and the request was not neglected. It was decided that the applicant wanted to go before a body to make the land use determination, and this is the reason the item was placed on tonight's Commission agenda.

Chair Duncan asked for a summation and asked Ms. Whales to specifically expand upon why a CUP and CEQA are required.

Ms. Whales said in visiting the site, one can see the framed structure which has been on the site since 2004. Many developers have had made inquiries and tried to work with the applicant. It was not until 8 months ago that Code Enforcement questioned why nothing had been done with the site and staff learned of the car wash proposal. At this time, staff is not opposed to the car wash but it would be in the best interest of the City to have a CUP for the project. Currently, all car washes within the City of Richmond go through the CUP process. No exemptions were given to them.

Regarding the categorical exemption, Ms. Whales said staff cannot make such findings. Therefore, staff is seeking direction from the Commission as to whether or not the project, based on its merits and the testimony given, can be exempted from CEQA. It is ironic but CEQA could have been conducted when the applicant first met with staff; however, this was not accomplished. It was not until the middle of December that certain environmental impacts of the project were disclosed to the applicant and the applicant agreed to have those studies performed by outside consultants.

Staff is currently in a position where it would like something defensible to disclose all environmental impacts if there are some. She said while many may be perceived, none are known until they actually go through the process.

Mr. Privat added that he has reviewed the three possible exemptions and does not see how the 'existing use' exemption applies. The replacement or reconstruction talks about projects that will have substantially the same purpose and capacity as the structure replaced, which would also not apply. There is an infill development, but he was not sure the elements were present which define an infill development, to which he verbally read into the record. He said if the Commission feels this project meets all conditions A through E, then it could make a finding that it was exempt.

Commissioner Choi agreed that after Mr. Privat read the actual language of the 'infill' exemption, it does bring up doubts as to whether the project qualifies.

Vice Chair Lane said she believes that most of the conditions A through E are met except for D, which is the biggest issue. She was not sure whether the project should require a CUP or not

and feels the key question is whether there are significant items to be reviewed and/or mitigated.

Secretary Lee referred to the staff report for the December 10<sup>th</sup> meeting wherein Ms. Whales indicates it is categorically exempt from CEQA guidelines. However, the recommended action is to hold over because the City of El Cerrito and the Richmond Annex Neighborhood Council have requested more time to review all environmental impacts of the project. He suggested the City was getting sidetracked with the City of El Cerrito. He also recognized that the Richmond Annex Neighborhood Council is the one of the more difficult bodies to agree on anything, yet they support the project. He questioned why there is argument now as to something that was not needed six months ago.

Ms. Whales apologized and noted that the statement in the December 10<sup>th</sup> meeting was a typographical error due to the use of a template which was not revised. The applicant was never told it was categorically exempt but he and his attorney are using this as evidence now. Secretary Lee confirmed with Ms. Whales that it was never implied to the applicant that the project was exempt from CEQA other than for the error contained in the staff report.

Secretary Lee said he believes calling the project an 'auto service facility' is incorrect. Chair Duncan said it is a semantic distinction and while unfortunate, it implies certain things that have nothing to do with car washes. However, at some point, the car wash use was folded into this nomenclature and it does not make a lot of sense, but the City cannot think about it this way. The intent is that it includes car washes, and the way it has been traditionally interpreted in other cases has been inclusive of this wording.

Commissioner Choi questioned if the interpretation would be different if the City still had 'auto laundry'. Ms. Whales said no; the designation of auto laundry would still require a CUP.

Secretary Lee asked if auto services require a CUP, and Ms. Whales said no unless it is retail in nature, like a Kragen's or a car dealership.

Secretary Lee felt the project falls under 'auto services' more appropriately than it would under 'auto repair'. He said he sees nothing in the 'urban infill' exemption description to state that the project does not qualify for the exemption and reiterated why staff feels it does not qualify. Ms. Whales responded that the exemption finding cannot be made for Item D of the urban infill exemption.

## **BREAK**

Chair Duncan called for a brief break at 7:31 p.m. and thereafter, reconvened the regular meeting at 7:45 p.m.

Secretary Lee reiterated that he believes the project should be exempt under the 'urban infill' exemption and, secondarily, could be exempt under the interpretation of whether this is an 'auto repair facility'.

Commissioner Soto said he appreciates the discussion on the item. He thinks the project appears to be a good fit for this area. He also appreciates that the applicant has reached out to the neighborhood council and others and worked with them and staff to make adjustments to the proposal. However, from a Planning Commissioner perspective, he finds that the project is not exempt from CEQA requirement primarily because the degree of demolition which will occur and the degree of which new construction will occur. It is too significant a change to the existing

structure to say it would provide an exemption. He also thinks the differences of opinions or lack of knowledge and opinions on some of the environmental issues, particularly around hydrology and biology which have not yet been examined also raise a concern that this should be not exempt. Furthermore, he thinks that, given the history of the way car washes have been handled in the City, it would be inconsistent for the Commission that it should not be subject to a CUP. Therefore, he thinks there are too many questions that potentially can be raised so as not to require CEQA review and a CUP. As stewards of the property from the City's perspective, he thinks the Commission should adhere to as many facts as possible, and his position is that the facts would suggest CEQA review and CUP are both required.

Chair Duncan concurred with Commissioner Soto's comments and said in the staff report, the CEQA guidelines Section 15301 "exempts facilities from environmental review consisting of minor alterations to existing structures where the project involves negligible or no expansion". He said the site is blighted and these are hardly minor additions. In looking at Item D raises the question about potential impacts and this is what the Initial Study asks. The Commission will have information it needs to dissuade concerns if the Initial Study is done. This is the first step in CEQA. They may end up with a negative declaration but it is something that should have happened early in this process to make this a more lucid process.

Regarding the CUP, Chair Duncan said if the Initial Study is required the Commission cannot act on the CUP tonight because the findings cannot be made until they understand whether there are impacts to the site.

The public hearing was closed.

**ACTION: It was M/S (Soto/Choi) to find there is reason to direct staff to initiate an Initial Study for CEQA; Vote: Ayes: Reyes, Choi, Lane and Duncan; Noes: Lee; Absent: Reyes and Teltschick-Fall.**

Chair Duncan said the action for the item may be appealed in writing to the City Clerk by 5:00 p.m., Monday, July 18, 2011 stating wherein the Planning Commission's decision is in error.

**Brown Act – Public Forum – No speakers**

## **COMMISSION BUSINESS**

### **5. Election of Officers**

Chair Duncan noted the Nominating Committee was formed of Commissioners Choi and Reyes to meet to nominate members to fill the Secretary, Vice Chair and Chair's positions. Commissioner Choi said he inquired as to whether the current officers were desirous of continuing their current roles, and also inquired as to whether or not non-officers were interested.

Commissioners voiced their agreement with continuation of current officers.

**ACTION: It was M/S (Soto/Choi) to close nominations and appoint the following Slate of Officers: Chair Duncan, Vice Chair Lane, Secretary Lee; unanimously approved.**

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

Mr. Mitchell reported on the General Plan update, stating that City staff has been coordinating the scheduling of a series of public hearings. He said the North Shore discussion was to be continued initially in order to receive clarification and direction, but the tentative land use proposal is no longer moving forward.

Vice Chair Lane said she was concerned with the process for the North Shore and clarified with Mr. Mitchell that the land use designation will return to the Planning Commission for recommendation to the City Council.

Commissioner Soto said he thinks one reason for the delay of setting the date for the City Council was that one of the property owners filed a complaint with the FPPC suggesting that a Councilmember would have a conflict of interest, and they were awaiting this decision. He noted that the decision was made that the Councilmember would have a conflict of interest.

Chair Duncan said the Commission has suggested there be two sessions for review of the General Plan and confirmed with Mr. Mitchell that any number of meetings could be scheduled for the Commission to complete review.

Commissioner Soto and other Commissioners voiced their relief that the Planning Commission will be meeting on the North Shore prior to the City Council.

Secretary Lee reported he was fined \$100 for not sending his Form 700 on time, but was only provided with 2 days' notice. Chair Duncan said the same thing happened to him, he paid the fine, and he wrote a letter to the City Clerk. Both Commissioners asked that Mr. Mitchell discuss this with the City Clerk.

Vice Chair Lane voiced support for holding more than one meeting for review of the General Plan update. Commissioner Choi concurred and said he was appreciative of the public comments received in the process.

Chair Duncan thanked Commissioners Reyes and Choi for their work on the Nominating Committee and adjourned the meeting.

## **Adjournment**

The meeting was adjourned at 9:03 p.m.