

PLANNING COMMISSION MEETING
COUNCIL CHAMBERS, RICHMOND CITY HALL
1401 Marina Way South, Richmond, CA
October 4, 2007
7:00 p.m.

COMMISSION MEMBERS

Virginia Finlay, Chair
Zachary Harris
Jeff Lee, Secretary
Vacant

Vice Chair Nagarajo Rao
Stephen A. Williams
Vacant

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

Vice Chair Rao led in the Pledge of Allegiance.

ROLL CALL

Present: Chair Finlay, Vice Chair Rao and Commissioners Harris, Lee and Williams (arrived at 7:08 p.m.)

Absent: None

INTRODUCTIONS

Staff Present: Janet Harbin, Jonelyn Whales, Carlos Privat and Richard Mitchell

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 October 15, 2007, by 5:00 p.m. and announced the appeal process after each affected item.

CONSENT CALENDAR

Secretary Lee said the Consent Calendar consisted of Items 4, 6 and 7. Ms. Harbin requested Item 3 be moved to Consent because it was recommended for hold over to November 1, 2007.

Commissioner Harris referred to Item 6 and said he was the designer on the project, and if taken off the Consent Calendar, he would not participate on the item.

He requested modifying Item 4's recommendation but asked that it be left on the Consent Calendar; that at the August meeting the Commission gave staff the direction to put forth a resolution relating to hillside guidelines. He said there are 6 design guidelines when reviewing projects for consistency with the hillside ordinance, which begin on page 130; a) tree preservation; b) hillside grading and drainage; c) lot configuration; d) street layout, driveway and parking design; e) the reduction of building bulk in multi-building projects; and f) landscaping. In his opinion, the Canyon Oaks II project has covered portions of items a-c, but regarding d-f,

those items are part of the site development of which the Commission had not seen yet, except for the grading plan and street plan.

He felt the Commission could adopt the resolution and rely on additional conditions to be put forth as part of the design review process, but felt the Commission wanted to evaluate those items and state conditions for them. Therefore, his recommendation would be to modify staff's recommendation and call for a continuance such that the design can be put forward so the Commission could evaluate those items completely and make conditions regarding street, driveway, reduction of building bulk, and landscaping, as necessary.

Chair Finlay said she watched the hearing on television due to her absence at the last meeting, requested clarification from the City Attorney, and she confirmed that Commissioner Harris' issue was due to a lack of information on conditions d-f and she asked about what the Commission could discuss based on direction given at the last meeting.

City Attorney Privat said if the question is limited to the conditions and their sufficiency, it is appropriate. If the Commissioner wants to go back and consider the conditional use permit, this would be inappropriate. **Commissioner Harris** agreed that the discussion should only be limited to the conditions.

Chair Finlay voiced her concern with the way the item was agendaized. She said there is confusion by the general public whether or not testimony would be taken on the conditions, and although technically this item meets the letter of the law, she does not believe it gives enough information about what would happen tonight on public testimony and what the issue at hand is. She felt public testimony should be taken on the conditions, but she was not sure the agenda outlined both the framing of the discussion and the fact that public testimony will be taken. She said the agenda does not indicate a public hearing or that testimony will be taken; just that the Commission will adopt the resolution.

Ms. Whales said at the last public hearing, the public hearing was closed and staff was directed to return with a resolution for adoption. However, **Chair Finlay** felt the public had not had a chance to review the resolution. City Attorney Privat said if the Commission feels that the agenda does not advise the public of the meeting in the matters to be transacted or discussed, it would be appropriate to continue the matter.

Vice Chair Rao said he was in agreement with the Chair and Commissioner Harris. **Commissioner Lee** said in Mary Renfro's comments on page 3, it states a final decision had not been rendered on the conditional use permit and he was not sure what the Commission was trying to decide. **Chair Finlay** said it was her understanding that the Commission accepted the CUP but asked that the conditions come back for review because the Commission did not have the conditions in front of them. **Commissioner Lee** agreed with the Chair's recommendations. **Commissioner Harris** agreed, as well.

Chair Finlay suggested Item 4, therefore, be removed from Consent Calendar and recommended the item be moved to the beginning of the meeting agenda.

Chair Finlay referred to Item 7, said her tendency was not to remove the item but wanted clarification regarding the street vacation and whether or not there were three abutting property owners. She was also not clear on the duties for maintenance and repair and whether it only applied to American Standard or other property owners. Ms. Harbin believed there was one property owner, and **Chair Finlay** said this was not clear in the report and she requested Item 7

be removed for clarification of ownership. A member of the audience noted he owned one of the properties, and **Chair Finlay** asked that the item be removed.

Items requested for removal were Items 4 and 7 (Finlay). Item 3 was placed on the Consent Calendar per staff's request due to it being held over to November 1, 2007.

Commissioner Harris requested that Item 6's modifications be included in the motion for the Consent Calendar adoption. Ms. Harbin said Item 6's modification was found in the staff report and discusses the parking as to whether it is shared or not shared. She said the parking numbers are sufficient for its use; one of the businesses where parking may be shared is no longer there and will not be used as a business in the future.

ACTION: It was M/S (Rao/Williams) to approve the Consent Calendar consisting of Items 3, and 6 (as modified per comments in the staff report); unanimously approved (Harris abstained on Item 6).

Items Approved:

3. **Outdoor Vending Ordinance Amendment** - PUBLIC HEARING for an Ordinance Amendment for changes to City's existing Outdoor Vendor Ordinance - Article 15.04.700 of the Richmond Municipal Code. Planner: Hector Rojas. Tentative Recommendation: Hold Over to 11/1/2007.

6. **CU 1104193 – Operate A Catfish Restaurant at 12432 San Pablo Avenue** - PUBLIC HEARING to consider a Conditional Use Permit application to operate a Catfish restaurant located at 12432 San Pablo Avenue (APN: 519-010-014). The proposed project includes improvements to the parking lot for the proposed use; however, no exterior building modifications are proposed as part of this project. C-2, General Commercial Zoning District. Dave Bailey, owner; Thomas Wright, applicant. Tentative Recommendation: Conditional Approval.

Brown Act – Public Forum

Vicki Winston said her understanding from conversations with the City Attorney's Office was that the only thing which could be discussed regarding Item 4 would be conditions. However, there are other items she wanted to speak on that have nothing to do with the conditions, and she asked if she could speak on those. **Chair Finlay** said her comments may not be regarded in the public record if they did not have to do with the conditions. Ms. Winston referred to the resolution and said in the language it appears that a variance would be needed to find Statement 5 could be conditionally satisfied or not conditionally satisfied. **Chair Finlay** said she could address the conditions in the resolution at the time of the public hearing. Ms. Winston said the conditions followed the statement of findings. City Attorney Privat said what is limited to discussion are the conditions and not the findings granting the CUP.

Ms. Winston said she had concerns regarding statement 5 that the project is consistent with the hillside development regulations and design criteria as being conditionally satisfied. It states that some of the significant natural features of El Sobrante Valley will be preserved. Her concern is with the hillside ordinance and if a finding is made that is in direct conflict with an existing ordinance, a variance is required because the ordinance is not being adhered to.

Tim Kilkenny, Achison Village member, said he is against sprawl development for fiscal concerns, said municipal governments use more money than it applies for its tax base, he invited the Commission to agree that sprawl will cause high carbon footprint costs, the need for private transportation versus mass transit, and future generations will suffer its costs and impacts. He asked for higher density development only where feasible and near mass transit, asked to keep riparian and other habitat as open and natural as possible, and said many ordinances are created as guidance that serves to direct the Commission.

Mary DeBenedictis said her concern is why the Planning Commission makes minimal effort to notify the community of planned developments that will significant impact residents' environments. She felt the sparse noticing was inadequate for informing constituents, felt expecting the average person to walk past a pole or read the paper on any given day disrespects the public's interests.

Herk Schusteff said he was confused about people's rights to speak regarding Item 4, said he wanted to talk about the future of Richmond and its resources, felt the planning department's recommendations were not good advice, they feel any development is good development, said it would be nice for flexibility and innovative thinking to solve problems, felt there were many opportunities for creative and profitable modifications and felt the public should play a role. He invited people to come back and speak on the agenda another time on Item 4 and felt the false assumption that nature and humans were in competition for land was in error. There are lots of opportunities to provide housing while maintaining the environment and human's quality of life.

Jerome Smith cited Robert Browning, spoke about reality and hopes, felt what is before the Commission is a transformation of reality and felt the hillside was seen and defined as an opportunity, there are partial consistencies and the City was creating a fiction and deciding on the validity for something that is based on a trick. He asked how valuable it would be for the Commission to stand their ground and not allow the hillside to be transformed and deconstructed and hoped the developer was not allowed to perpetrate a hoax on the Commission.

Items Discussed:

- 4. CU 1102306 – Canyon Oaks II at San Pablo Dam Road and Castro Ranch Road** - To consider Adoption of a resolution for approval of a Conditional Use Permit demonstrating that the Canyon Oaks II project conforms to the City of Richmond's Hillside Ordinance. The project is located south of San Pablo Dam Road near the intersection of San Pablo Dam Road and Castro Ranch Road, adjacent to and northwest of the existing Canyon Oaks I development. Assessor Parcel numbers for the site include 573-020-009, 010, and 011; Zoning Districts SFR-1, SFR-3, and CCR; and General Plan designations of Very Low Density Residential/ 942, and Preservation Resource Area/941. TJG/Summit Development Corp., owner; John Zentner, applicant. Tentative Recommendation: Adopt The Proposed Resolution.

Chair Finlay informed the public of the protocols for discussion on the item, appeal period and instructions, reference materials on the item and speaker times.

Secretary Lee introduced and read the description of Item 4 into the record.

Chair Finlay said if the decision is to hold over the item due to the item's noticing requirements, she confirmed with staff that the item could be heard next on November 1, 2007. **Chair Finlay**

said the hearing was previously closed and questioned whether fellow Commissioners wanted to rescind its prior motion and re-open the public hearing.

ACTION: It was M/S (Lee/Rao) to rescind the motion to close the previous public hearing; unanimously approved.

Commissioner Rao requested confirmation of what conditions would be discussed, and **Chair Finlay** said these were those of the hillside overlay district discussed at the beginning of the meeting of the CUP conditions.

ACTION: It was M/S (Williams/Rao) to re-open the public hearing for the purpose of solely discussing the conditions; unanimously approved.

Public Comments:

Daniel Donahue said he lives in Canyon Oaks I and has been fighting the Canyon Oaks II project for five years. He has read the EIR reports in depth, said it is in conflict with the hillside ordinance, felt the hills were a treasure, if approved the Commission will challenge the law of the ordinance, and he urged the Commission to consider the impacts to the community.

Deborah Plaza cited poet Oren Lion regarding future generations looking upon us, felt ancestors remind us that our accomplishments should not be how much money we make, how big buildings are, but how our decisions affect our future generations. Cited Leo Tolstoy's, "The Death of Ivan Ilyich", and how we are placed in the world with work in our hearts, and she felt there was a purpose, a heroic mission to being here, and she wanted everyone to be careful about what their true calling is.

Nathan Clark said he does live in the hillsides but visits them for recreation, felt coming to the meeting was a bit like entering a foreign country, said it seems like there is an opposition by a group of professionals on the Commission who use convoluted rules and procedures as a way to dismay to him and felt its effect was chilling. Regarding his thoughts on the hillside, he asked whether Canyon Oaks II would get shoe-horned into the hillside, questioned if the ordinance is bent in order to make the project successful and felt anytime hillsides are graded it threatens what the hillside ordinance strives to protect. If the hillside ordinance is bent, he felt it makes it that much easier to bend again, and he felt the Commission's mission was to prevent this from happening.

Brenda LaPlante said she is a homeowner in Canyon Oaks I, said number 5 in the agenda relates to the hillside ordinance, cited issues relating to adherence of the ordinance to the physical constraint regulations and El Sobrante Valley Guidelines, felt it was an alarming precedent which would lead into intrusions into the hillsides into the future, said there are inconsistencies in documents such as the agenda report, discussions around the fire trail with an easement which is not contained in the CUP, there was a commitment by the developer for tot lot improvements and to provide a 10 foot greenbelt between her fence and the development, she has concerns with the usage of Canyon Oak I street and its safety plan at the beginning of construction, concerns with the parking plan, the noise barrier in the EIR, the inconsistencies in hours of construction and weekend hours and preferred the M-F 8:30-6:00 hours and 10-5 on Saturday and Sunday, wanted a published plan on significant milestones so they are aware of activities in their weekend backyards, and she said while she opposed the project, she did appreciate the developers working with neighbors.

Lili Saki said she has tried to understand the project terminology, said many other people do not understand the EIR, described a situation where she woke up one day last year at Greenridge which was an astounding site; none of the neighbors knew what happened to all of the trees and her fear is that if this project is approved, the developers would come and cut down all of the trees which would completely disturb everyone's peace and quiet. She is against any of the trees being cut down and damaged, was opposed to the project, and asked not to allow any of the natural terrains to be ruined.

John Luckett said he lives in the San Pablo Creek area below the hillside, said he moved thinking the area was nature-friendly with trails and hiking and is appalled that the development is moving forward. He felt geology is being ignored, as well as landslides, erosion, and seismic activities, felt the developers are violating the first rule of real estate which is location, location, location and cited the hillside ordinance's violations.

Mary DeBenedictis said after studying the maps and EIR she feels she has not been well-informed by the project's impact. She voiced concern over hillside stability, root systems that stabilize the area, hillside stability of grading to a 2:1 ratio, flood control to Hunter's Lane without extensive studies, significant drainage improvements, asked about the existence of emergency plans providing for overflow and system failures, runoff issues, erosion and slides, road debris, oil, herbicides, pesticides and pollution to Hunter's Lane properties, said the EIR report does not address hydrology concerns and referred to page 135, part A, she said there were no mitigations for noise impacts and violates the noise ordinance and said the master responses have not addressed many insufficiencies, particularly those cited by Joanne Spalding.

Tress Ramsey voiced concerns regarding water runoff, storms, landslides, felt once these are mitigated they will be maintained by the Homeowner Associations which are notorious for not having things maintained properly. Even given conditions being met, she did not believe the project would ensure flood safety or maintenance into the future.

Robert Hrubes a California Registered professional Forrester and Economist, spending many years as an environmentalist, said this is his first time he came to a Commission meeting and questioned the due process. He felt that if the conditions are premised on or require a revision to the hillside ordinance, they should not be considered adequate. The ordinance was the result of public due process and the Commission should think long and hard about abrogating the ordinance to accommodate the project. He has walked in the area, appreciates the open space importance and uniqueness, he asked the Commission to think about future generations and the project's implications which are not reversible and felt the Commission had the opportunity to stop the project.

C. H. Gallucci said his backyard is right where the timber starts and these are oak trees, which are not supposed to be cut. He said there have been many landslides on the hillside and he felt it was very unstable to build in the area.

Chair Finlay asked for Commission comments.

Commissioner Harris said he did not feel the Commission had enough information, even considering the designs provided as part of the tentative map, the environment impact document and the rezoning approval. Those documents which were not made available until today do not provide sufficient information to make a decision on the resolution. Therefore,

Commissioner Harris made a motion to continue the item until such information is received regarding those areas of the hillside ordinance that would allow the Commission further review.

Vice Chair Rao seconded the motion to continue the item to November 1, 2007.

ACTION: It was M/S (Harris/Rao) to hold over CU 1102306 to November 1, 2007 with additional information requested; unanimously approved.

1. **CU 1103502 – Marina Live/Work at 900 Block of Marina Way South - PUBLIC HEARING** to consider approval of a Conditional Use Permit, a Mitigated Negative Declaration and Mitigation Monitoring Program for 64 live/work units on a vacant parcel located on the west side of the 900 block of Marina Way South between Wright Avenue and Regatta Boulevard (APN: 560-260-054). The project proposal includes a request for an exemption to floor area ratio (FAR) development standard. Knox-Cutting Specific Plan: R&D/Business, Light Industrial and Sub-Area D. David Spatz, owner/applicant. Tentative Recommendation: Various

Secretary Lee gave a brief background of the request for the matter. **Chair Finlay** said the hearing was previously opened and closed, and she asked for a motion to rescind the closure of the last public hearing.

ACTION: It was M/S (Harris/Rao) to rescind the motion to close the public hearing; unanimously approved.

The public hearing was unanimously re-opened.

Chair Finlay said she was not present at the last hearing and did watch then entire hearing on television and said she is able to participate on the matter. She asked the City Attorney Privat to discuss the various actions to be taken by the Planning Commission. City Attorney Privat said the question is the conditional use permit. Issues will be whether the Commission will permit live/work as a use and grant the Conditional Use Permit for this property versus limiting it to Commercial versus granting it with a rental limitation which is not permissible. So, the Commissioners are looking at options, 1, 3, 4 or 5.

Chair Finlay confirmed that the motion made by Commissioner Harris was that there was no specific approval of the property; that the Commission instructed staff to come back with the information to support the findings, so the Commission did not grant approval. She asked if staff had additional, new information to add to their prior staff report for consideration.

Planning Director Richard Mitchell referred the Commission to the last two paragraphs on page 2 that they thought they should offer as additional factual information that may have not have been considered. Staff notes there has been substantial investment made in heavy industry west of Harbour Way. There is quite a bit of information in the Knox-Cutting specific plan as the City considers projects in the area and there are many assumptions in the plan in 1991 that in fact, did not happen; one was that it was expected that the railroad activity would continue to shrink and ultimately disappear in some areas, and there was not an anticipation of the level of new investment in heavy industry which in fact has occurred. Whereas the plan envisioned a substantial shift in activity in this area, that shift did not occur and this should be considered. In the following paragraph, staff did some additional research about live/work which Richmond does not have a lot of experience in where Oakland and San Francisco do have experience in,

staff discussions with those two communities indicated that the issues addressing in a live/work project are in fact residential issues. The ability of a City to regulate what happens in a residential live/work project is fairly limited. So, in looking at the model of space, he asked the Commission to take this into consideration in terms of its decision.

Chair Finlay said she understands option 1, there are 4 other options to be also considered. She was not sure she understood the legal nexus of option 2, between the condition of making the units rental units only and she asked what the rationale was for adding this as an option. Mr. Mitchell said in the approval of residential property around the City, some residential property is approved at a condominium level, some is approved at an apartment level, and often when the City will approve a rental property, the objective of its approval is to create on-going accessibility for rental versus ownership ratios and cities were trying to encourage more in the way of rentals. Staff was looking to provide the Commission with a cascading series of options from approval as presented to some approval that would provide the City with some eventual recourse should the conflicts of this particular land use prove to be insurmountable. So the thought was that should it be necessary to address a conflict that may occur if both the heavy industrial and live/work uses expand over time, then the Commission essentially has less of a challenge to untie the knot once the project is subdivided into a condominium complex, in which case it is a permanent land use shift.

In discussions with the City's legal department suggest we do not have the option of making this requirement, it is difficult to make a finding that would support this, so this option is not available for the Commission's consideration.

Chair Finlay therefore confirmed Option 2 was not an option to consider. She said Option 3 is to approve the project as commercial only with no provision for residential occupancy, and she asked if anyone had discussed this concept with the applicant and if so, what has the response been. Mr. Mitchell said this option has been discussed with the applicant and the applicant's preference is to proceed with the project as initially proposed.

Chair Finlay referred to Attachment 1 and confirmed it included the two current resolutions. City Attorney Privat said the conversation is focused on whether the Commission is going to grant the conditional use permit or not.

Commissioner Lee said the Commission went through the entire hearing and presentation process on the item, comments were received pro and con and the Commission was stumbling on the request for an exemption of the FAR which is discussed on page 4 of the staff report. The rest of the project specifics have already been discussed completely at the last meeting. He also disclosed that he has discussed the project with representatives from the Council of Industries as well as the applicant.

Public Comments:

David Spatz, Applicant, said he would discuss why Artisan Cove is the right development for Richmond and for the Ford Peninsula, said the project is in an area that is zoned M-2 and with the Knox-Cutting overlay and both designations allow live/work as a conditional use. He emphasized that live/work was distinct and different from residential. The City's definition of live/work comes directly from the State Health and Safety Code, it is not capricious or inexact; it is distinct and different from residential in Richmond and in the state. He said the City of San Francisco set up a condo-like program and called it live/work. They wanted to encourage development, they allowed reduced parking, no yards, no closet in the bedroom which was

housing called live/work. He said live/work is allowed, it is distinct and different from residential housing and it is a great transitional use for the Ford Peninsula. Upon its claim that live/work is incompatible with the railroad, apparently on its claim that the railroad is too noisy and too polluting for people to be living or working nearby, yet Richmond has approved over 700 high-density residential projects in the last year to 18 months within ½ mile of Artisan Cove--Signature Properties, Pulte Homes, and Toll Bros. He said it is clearly safe to live and work in the Richmond Marina as demonstrated by what they are doing, felt live/work was the best transition use in an area between high density housing further east and heavy industry further west. There is a strong mitigated negative declaration; it requires CC&R's that lets live/work occupants know they are moving and living in an industrial area and they go with the land. The negative declaration shows they can mitigate to less than a significant standard in all CEQA issues. The difference for live/work in Richmond is that it is a conditional use permit occupancy; therefore, residents that do not meet the conditional use permit requirements cannot be there. Residents that stop meeting them can be terminated, as the City has this power. He said San Francisco Water Transit Authority has proposed that the City make much of the Ford Peninsula high density residential to support a ferry and the Council has endorsed this proposal. Artisan Cove is a positive addition to that very development in the Richmond Marina.

Syvia Magid, Attorney, Stein, Rudser, Cohen and Magid, LLP, said live/work is distinct and different from residential use, California law treats it that way, the Richmond General Plan treats it that way and the zoning ordinance treats it that way. The Knox-Cutting Specific Plan simply reiterates the definition of live/work that is found in the zoning ordinance. The zoning ordinance contemplates that live/work units will exist in industrial districts. In fact, it states that occupants accepts the conditions found in the area including but not limited to industrial noise, pollution, fumes, dirt, traffic and odors to the extent that they are permitted by law. As noted by Commissioners Williams and Rao at the September 6th meeting, many of the live/work projects work close to industry. She said they are asking for a conditional use permit, they are aware that the project will somehow become a residential project, but under California law, the City can revoke a conditional use permit if there are violations. The Richmond Zoning Ordinance sets forth the grounds for revoking and modifying conditional use permits. For example, the Planning Commission can revoke the permit if it was issued on the basis of misleading information or if the conditions of approval were violated. The fact that the Commission can revoke the conditional use permit should eliminate any concern that this live/work project would be used as a residential project only. Moreover, the City requires business licenses for the units, as well. At the September 6th meeting, there was a discussion regarding the FAR for the project and the City's standard approach to FAR within the Knox-Cutting Specific Plan. They believe the FAR of .50 set forth in the General Plan should be the governing FAR since the General Plan was amended in 1994, making the FAR set forth in 1991 Knox-Cutting Specific Plan superseded as a development standard. And, they understand the Planning Commission has consistently applied the Knox-Cutting Specific Plan FAR to projects and then findings are met to grant the FAR variance or exception. As set forth in the agenda report and the first resolution, they believe all the findings are necessary to meet the variance. She said also set forth in the agenda report and resolutions are that they do meet the standards and findings for conditional use permit under both the Zoning Ordinance and the Knox-Cutting Specific Plan. They also know there is an apparent plan to modify language in the Knox-Cutting Specific Plan pertaining to buffer zone. The Council has specifically stated that any such amendments would not affect this project. Moreover, there is an on-going amendment process for the General Plan, it does not make sense for them to try to make an amendment to the Knox-Cutting Specific Plan at this time. Also, pursuant to California Government Code, no specific plan may be amended unless it is consistent with the General Plan. In fact, if the General Plan is amended such that the specific

plan is no longer consistent with the General Plan, the specific plan must be amended so it is consistent with the General Plan.

City Attorney Privat noted there should be only one speaker on behalf of the applicant and noted the regular speaker time would apply hence forth. However, he said this was at the Chair's discretion.

Marcia Vallier, Vallier Design, said she was the landscape architect for the project, said 30% of the site is landscaped providing double the requirement for landscape, it is automatically controlled by an irrigation system, has low maintenance and drought-tolerant plant material that is appropriate to the baseline environment that is in compliance with the green point checklist, the City's landscape design and development guidelines and the State's EBMUD water efficient landscape ordinance. They have a total of 161 trees, 75 of those are in the parking lot and double the amount required by ordinance, there are 12,200 square feet of open space within Artisan Cove and much of the area comprises of filtration basins which help takes the site's storm water management and doubles it as common space. Around the central core, there is 4,800 square feet of usable space which is supplemented by another 4,000 square feet of open space that is available to the artists and industrial users to display their work. At the front entry, they created a nice palm tree entry with an arch that provides space for public art, and they are aware that the City is moving forward with their art ordinance, which would address the need for public art. The frontage is heavily landscaped with street trees, landscaping along the southern faces of the walls with trees, and the entire area meets or exceeds what has been required by the ordinance.

Michele Tong, Sims Group, urged the City to deny the conditional use permit and mitigated negative declaration because there is a fair argument that the proposed project will result in significant environmental impacts and therefore, an EIR is required under CEQA. While there are several reasons an EIR should be prepared, she wanted to focus on noise. Specifically looking at the measurement system used in the Initial Study and mitigated negative declaration, average noise over a 24 hour period overlooks sleep disturbance, a public health impact. Using the average methodology, the spike in noise from trains is essentially eliminated. The City cannot justify using the 24 hour average exclusively just because it is used in the general plan. CEQA case law has long held that conformity with the general plan does not remove the project out of the realm of an EIR where it can be argued that the project will generate environmental impacts. Furthermore, the City is not insulated from an EIR by simply relying on the standards and guidelines of the Appendix G checklist for threshold of significance. A CEQA analysis is required to make a good faith effort to establish a standard of significance to assess the true noise impacts against that standard depending on the facts and circumstances of any particular project. CEQA case law is also clear that noise studies cannot rely exclusively on time averaged assessments if a single noise event is truly significant such as here with the magnitude of a single event is so loud. She felt the facts were indisputable, trains passing by the site three times in the evening and nighttime hours per day will exceed the general plan's maximum interior noise level of 45 decibels. Trains sounding their horns for 15-20 seconds or longer if their view is obscured by a sound wall before entering a crossing will produce sounds at around 105 decibels at the exterior of the closest bedroom window which is approximately 100 feet from the tracks. No practical window assembly will reduce this noise level to 45 decibels and if a resident keeps a window open, the sound can be close to 90 decibels. According to the Initial Study and mitigated negative declaration, sleep interference at 70 decibels is considerable and this is a potentially significant impact. The Initial Study and mitigated negative declaration found that the noise from trains would be potentially significant without mitigation. The mitigation measures offered; however, would not reduce the interior noise level to 45 decibels when a train

is sound its horn. According to the City's General Plan, "sleep interference is a major noise concern because sleep is the most noise-sensitive human activity." Residential development this close to railroad tracks and other industrial industries with significant environmental impacts require extraordinary mitigation which this project has not addressed. It is not an argument that development cannot occur near the port or railroad tracks, but that the City failed to adequately analyze the impacts.

Paul Minault, Counsel for Levin-Richmond Terminals, said they believe live/work is a bad idea for Richmond, they acknowledge it is a very appealing planning concept, said the idea is to provide affordable housing for artists and artisans where they can carry on their craft in a work-friendly environment while putting under-utilized industrial land and buildings to productive use. The problem is that it does not work. He said San Francisco tried it for 15 years, they permitted 3,400 live/work units in the City and they finally abandoned it because there were enormous problems with it. The Senior Planner who participated in drafting the live/work ordinance said it turns into a planner's Frankenstein in San Francisco. He said the Board of Supervisors commissioned a special task force to figure out what to do with live/work because it was such a problem, which included representatives from the arts community, labor and business, industry, the Board of Supervisors, planning staff, labor unions and the development community. And astonishingly, the task force proposed to ban live/work in the City in 2002 because of 1) The City found there is no way to prevent live/work units to be converted to residential use or to restore the work component after the conversion; 2) code enforcement staff said they could not effectively define a business, as anyone in their apartment with a computer can do business; 3) requiring business licenses was completely useless in the City—they either did not obtain them or go them as a passport to less expensive housing. When the dot com boom came along, many units were developed or converted to office use and in its subsequent bust, it cleared out most of that problem but it became obvious to everyone that live/work was a failed concept because the original intention could not be enforced. Units either became residential or commercial.

Mr. Mitchell gave the staff summation and referred the Commission to the remaining options for review and determination.

City Attorney Privat said he previously said it was a question of conditional use permit approval and live/work. There also is the CEQA analysis and findings the Commission must make.

Commissioner Harris referred to the conditions and Mr. Minault's comments, one item which was not addressed that came up at the last meeting was whether the Commission wanted to consider definitions regarding the criteria for what can occupy live/work spaces that constitutes "work." In reading the conditions, he could not find where this was covered. **Chair Finlay** said the applicant would accept a condition that each of the units must have a business license and she questioned if more clarification was needed on what would be included for live/work use or whether the actual condition was present. Mr. Mitchell said the requirement for a business license can be added to conditions; however, they do not provide any regulatory authority or enforcement authority.

Commissioner Harris questioned if there was language staff could look at to cover such regulatory authority. **Commissioner Lee** said he would be concerned that even if you can define "work", how would it be monitored. **Chair Finlay** said San Francisco found it virtually be impossible to do, and **Commissioner Lee** said he would hate to get bogged down in defining work if there is no way to monitor it anyway.

Vice Chair Rao felt the Commission was not considering how to define work in such situations, and **Chair Finlay** said since this is an M-2 zoning, she questioned if certain work was defined within the M-2 framework which could be brought into the area or project. Ms. Harbin said the types of business activities that are allowed creates the framework. **Commissioner Harris** said there is a guideline from the Knox-Cutting specific plan in the appendix defining live/work. It states, "It is the intent of the regulations to, among others, ensure that the live/work space uses is incidental and accessory to the commercial and industrial uses permitted in each zone." He said it does not describe anything about those enforcement provisions, but this is part of the intent of the section. **Chair Finlay** felt then one would have to go to the zoning ordinance and define acceptable uses within M-2 and what are conditional uses within the M-2 and that would be the framework for work. Mr. Mitchell said what the list of uses does is it establishes an outer edge of possible uses. The inner edge is that you can also live there. In a residential area, you cannot do manufacturing. In a manufacturing area that is also a living area, you can do living. So, it can't on the other hand say, you can't do living and there is no way to regulate what happens above the baseline of manufacturing or warehousing or whatever the outer use is. All the City has is that in a residential area, you cannot do those things.

Chair Finlay asked what happens if a child care center were to locate there. Mr. Mitchell felt the CC&R's within the complex would address that in some way. If someone were to apply to operate a licensed child care center, the City enforcement would be able to evaluate it and issue a license or not, but below a certain number of children/adults, people have that right without having to acquire a State license to do so.

Commissioner Harris disagreed with this because the buffer zone which is currently being evaluated in a draft provided earlier to the Commission, he was sure one of the items not allowed were educational institutions. **Chair Finlay** said however, it has been stated that this project is exempt from the buffer zone amendment, so one cannot look to that document to be a governing document here.

Commissioner Lee said there seems to be some discrepancy between Mr. Spatz's interpretation of the dates involved and cited on the resolution and his dates in his letter, and asked staff to comment on this. **Chair Finlay** said the letter provides a chronology; however, she felt the bottom line was that prior to the approval of Resolution 07-13, the Planning Commission changed the date in the first recital to March 2005 which is the correct date of the submission for the land use application. So, if the project is accepted, the change in the date should be part of the motion. City Attorney Privat referred to work and what is permitted and said the live/work standards address this in Section 15.04.870.040(f) which says that, "the permitted work activities shall be in accordance with the base zoning designation." So, if the zone permitted industrial, then that work would be permitted. If the zone did not permit child care center or educational facility, then it would not be permitted, so M-2 is the controlling document. **Chair Finlay** said then we may want this as a condition about definitions being found in the M-2 designation. Mr. Mitchell agreed and said this would refer to the setting up of a formal licensed facility, but it would not be able to regulate an informal or unlicensed facility.

Chair Finlay said as she has reviewed Resolution 07-13, page 2 where the Commission is to adopt the findings for approval for the conditional use permit, she cannot make finding 2, which states that, "The location, size, design and operating characteristics of the proposed use will be compatible with and will not be detrimental to the public health, safety or welfare of persons residing or working in or adjacent to the proposed conditional use in the surrounding neighborhoods." She said she lives in Marina Bay, is familiar with the location of the Signature Property, it is buffered from the train tracks by Dicon, she is familiar with Toll Bros., which is on

the other side of City Hall, it is not adjacent to a railroad track, this body in fact denied the Pulte Homes project which is adjacent to a railroad track and it was overturned by the City Council. So, she said she could not put residential adjacent to a railroad track and cannot make the finding number 2. She did not feel the noise is mitigatable and not an issue, said they have had residents who have left the Bayside project which is buffered by the Dicon site because they could not sleep at night because of the trains. She thinks there is a public health issue here, the State of California has issued a new report about the response of and proximity to ports, train tracks and diesel emissions.

Chair Finlay said she has respect for the decision made by the Planning Commission to consider approval at the last meeting, which she did not attend, but she did not feel there was any way to make finding number 2 for the reasons just stated. She agreed that the Water Transit Authority would like to bring a ferry to Richmond, but they will also tell you, because she attended those meetings, that Marina Bay already has enough residential density to support the ferry as is. So she was not comfortable with and did not feel the units in their location, were appropriate.

Commissioner Lee referred to the noise issue and trains, he said he lives within eye shot of the switching yards in Pt. Richmond and he has train noise all the time, they have a no horn ordinance, but if you use the criteria, half the people in Pt. Richmond need to leave their homes, and he felt it was just something one puts up with. He built a lot at a significantly reduced cost knowing there would be train noise, so it certainly is doable.

Chair Finlay said she is the person who receives complaints from the Marina Bay community and she remembers with great joy when Pt. Richmond got the quiet zone. With a switching yard, it only affects one part of the train traffic, you still must have horns sounding off when traffic is switching. She did not feel Commissioner Lee lived right next to the yard, she felt the people in Pt. Richmond have chosen to live there for a number of reasons, and she did not feel this made this an acceptable application.

Commissioner Harris said to him it is an interpretation of what the market will be. The idea of the project is that it will be for artisans and industrial artisans. If there are 64 of them to occupy the units, he does not feel noise is going to be an issue for those people because they will produce quite a bit of it themselves.

Chair Finlay felt noise would not be produced at night, which was the issue, and **Commissioner Harris** felt this would have to be something that will be bore out on this if approved.

Vice Chair Rao referred to building condos and apartments alongside the train tracks he felt this was a trend all over the Bay Area and all over the United States.

Chair Finlay said the City of Albany now is in a huge uproar because the BART train tracks have continued to deteriorate and noise is such an issue, that another piece of equipment has been purchased to solve the problem one-tenths of a mile a day, so she felt noise is an on-going issue.

The public hearing was closed.

ACTION: It was M/S (Lee/Rao) that the Planning Commission adopt staff recommendation number 1 and add the condition that all occupants of the project have a current Richmond business license; and that Resolution 07-13 be amended to reflect a March 2005 date for the first recital; Vice Chair Rao's amendment to include that the conditional use permit, design review permit, provide exception to the FAR, as listed on page 2 of the agenda staff report, and b; that the mitigated negative declaration and mitigated monitoring program prepared for the project will not have a significant effect on the development, and reflects the independent judgment of the Planning Commission; approve CU 1103502, the exception to the FAR requirement for the proposed live/work use. Vote: 3-2 (Finlay and Williams voted no).

Chair Finlay said the Planning Commission's decision may be appealed by notifying the City Clerk in writing and paying the appeal fee of \$150, by 5:00 p.m. on Monday, October 15, 2007, stating wherein the Planning Commission's decision is in error.

2. CU 1103339 – Relocation of an Alcoholic Beverage License Type 20 at 544 Harbour Way - PUBLIC HEARING to consider a proposal to relocate an Alcoholic Beverage Control Off-Sale License Type 20 from the convenience store located at 564 Harbour Way to the grocery store located at 544 Harbour Way (APN: 534-340-023). C-1, Neighborhood Commercial Zoning District. Nagi Almang, owners; Mazen Elmashni, applicant. Tentative Recommendation: Denial.

Secretary Lee introduced the item and request, and Ms. Whales invited Police Lieutenant Ron Barry to present the item.

Lieutenant Ron Barry said he has representatives from the West Contra Costa County Alcohol Coalition along with the members of the Iron Triangle Neighborhood Council and members of the proposed property, who were present to testify. In the City, they do not want to stop business; however, when it comes to crime, violence and quality of life issues, they need to look at other ways to remedy problems. He said the area was a hot spot, there are many parks within the area; Elm Street Park at 8th and Elm Street, a park at Harbour Way and Pennsylvania; Kaiser Hospital within 600 feet of the business, as well as Sisters of Poverty, who are nuns who operate a home which is at 526 Harbour Way. Historically, this has been an area where loitering, the selling of drugs, consumption of alcohol and violence has occurred. He asked the Commission to deny the transfer because there is no available parking for the business, there has never been any off-street parking, and Harbour Way up to Macdonald is a major thoroughfare. He also had statistical crime data since 2005 to the present and said Ms. Kaufman who would speak of the total crime in the area. He said in 2005, there were 10 robberies, 3 carjackings, 5 assaults with deadly weapons, 2 shootings, 15 brandishing of deadly weapons, and 16 calls where shots were fired. The City has also gone to a new system for collecting data and the two reporting districts; 616 and 618 where these two businesses are located, had over 1466 calls for service in 2005. In 2006, there were over 1445 calls for service, 7 robberies, 2 carjackings, 14 assaults with deadly weapons and 23 shots fired, which was an increase of 32% in crime. In 2007, information up to April shows numbers are down; however, given the location of the business, they have tried to maintain the crime and quality of life issues, but they rely on the Planning Commission and other agencies, as well as coalitions in order to address the matter. He felt there was a strong nexus between alcohol outlets and crime in the City of Richmond because of products offered. Individuals loiter in front of these establishments, some people consume 18% alcohol by volume and other spirits. He spoke with

the Bureau Commander, Alec Griffin, Captain of the Iron Triangle Substation who is aware of the problems they have and they are putting forth specialized units to combat these issues.

Chair Finlay confirmed that the statistics given did not directly relate to the specific address, but of the neighborhood reporting district of 6 square blocks. Lt. Barry said they can actually pull out actual addresses where crimes occur and this information can be provided. In that district, there are about 2 calls per day from that particular store during a certain period.

Commissioner Lee acknowledged Lt. Barry's comments, and asked how the situation would materially change if the Commission prevents the liquor license to moving to a location next door to where it already is now. Lt. Barry said in the year 2000, the same business went to move next door to Candy's Bakery, they expanded the building, parking, more square feet to store and market alcohol, and this was denied during that time. They are not trying to stop the business, but address the quality of life changes for the community around that neighborhood. **Commissioner Lee** confirmed that the Commission would, in fact, prevent the store's volume of alcohol sales from getting bigger. Lt. Barry said they track issues which perpetuate crime and deteriorate quality of life issues, and they can place sanctions on businesses. **Commissioner Lee** asked if the Commission could also place sanctions on the existing store, and Lt. Barry said they will go to ABC and go through a process that provides them with the right to impose sanctions.

Chair Finlay said traditionally, when the Commission has tried to either remove the ABC license or conditional use permit, how long does it take the city to actually get something done. Lt. Barry said it takes a very long time or about 5 years, even when getting sanctions imposed. However, they are utilizing every available resource in order to be more profound in their dealings.

Ms. Whales said staff recommends the Commission deny the conditional use permit based on the findings of fact contained in the staff report.

Mazen Elmashni, applicant, said the application process began one year ago, the owner of the store did not originally own the building, the owner of the building increased the rent from \$3,000 to \$6,500 a month for 1,000 square feet. With all respect to Lt. Barry, he dramatized the situation as a smaller distance between the two properties. He discussed making one business a Laundromat and one business a store, or close one and keep one open, but the larger store was established at 2,400 square feet, which just has beer and wine. He said the other license had no limit for hours of operation; however, he worked with Planning staff who recommends denial and felt police have not had any calls from the business, said they want to move the license from 564 to 544 Harbour Way where they will only sell groceries and beer. He said he deals with ABC constantly, they will be limited to not selling single cans, there will be no malt liquor, high volume alcohol and the Commission can condition this. He said Ms. Whales did not take the check for the application because she was not sure if it was a transfer or a new license. He said a new license will not be allowed because there are none left, so they want a transfer which she kept refusing to accept. He went to the ABC and they called her to indicate it was a transfer and she finally accepted it. He said the other location did not have any alcohol since October of last year because he surrendered the license, said they were not adding alcohol, they will close one store and open another. The old store has no limits, but the new one will have limits and conditions. He felt the biggest problem in liquor stores was the high volume wine, but they are not selling this, which the planner did not present. They met with the Iron Triangle Neighborhood Council twice and they agreed it was okay as long as they were closing a store and opening another.

Commissioner Harris confirmed the owner of 564 Harbour Way was Aied Dobashi and the owner of 544 Harbour Way was Nagi Almang. **Commissioner Harris** asked if the license was shared between the two people, and Mr. Elmashni said 564 Harbour Way is closed with no license and the applicant who runs the grocery store owns 544 Harbour Way, or Mr. Almang.

Public Comments:

Mildred Carlton said she is a member of the West County Alcohol Policy Working group, said she lives in the Iron Triangle and asked the Commission to deny the conditional use permit. She said the Iron Triangle is high in crime, said the Police Department has divided Richmond into 6 block areas called RD's. This store is located in RD 618, she received statistics that show between January 1, 2003 to the present time, there were 3,634 calls for service averaging 64 calls per month for RD 618, or greater than 2 per day and said the entire area is concentrated with crime. The Police Department statistics further show that 22% of the calls to the applicant's former store at 564 Harbour Way came from staff or those personnel of the store and 78% came from the general public. She asked if the new store owner will be more responsible at his new location, but felt the best predictor of the future is the past. Kaiser Hospital is located 331 feet from this store and a shoot out occurred a few days ago on Nevin Avenue which abuts the Kaiser property. The vehicle continued east into the hospital and the suspect ran around the corner and into a yard. The police officer ordered him to drop his gun, but he turned on the officer who shot and killed him in the yard. She said the Business and Professions Code, Section 23789, it states the City is specifically authorized to deny the issuance of a license if it is for retail sales of alcohol if it is within the immediate vicinity of a hospital. She said the CEO of the Richmond Chamber of Commerce was robbed at gunpoint as he approached her car to leave the hospital. She went immediately to the Iron Triangle Substation where an officer handled the report and within 20 minutes the suspects were apprehended. She said people come regularly to their meetings who own stores and say they simply cannot get the police or sheriff's departments to respond to crime. There is a church on 9th Street 1.5 blocks from the store, Lucas Park is 1.5 blocks north of the store, the Missionaries of Poverty is the fourth building down from the store who filed a protest from the state but they were not filed timely. They asked her to indicate they were not present tonight because their order prohibits them participating in public protests and Thursday night is their prayer night. They will be in prayer as the Commission deliberates as to what will occur in this case asking God that the permit be denied. There are 7 stores in the Iron Triangle which is less than 1 square mile. She said if not denied, she asked that it be held over to equip the CUP with conditions. She said Mr. Almay is currently the owner of 544 Harbour and has moved his business from 564 Harbour. The law requires that the license cannot be moved to the new address, and a City ordinance states that if there are no alcohol sales within 120 days, they cannot start up again without a conditional use permit and the city could deny it. So, they are faced with the possibility of no alcohol at all along that block and she hoped for this. If the CUP is turned down for 544 Harbour Way, ABC cannot issue the license and there cannot be one at 564 Harbour Way because more than 120 days have lapsed and that grandfathering is gone without a conditional use permit, which could be denied.

Commissioner Harris asked if the business at 564 Harbour Way was boarded up, and Ms. Carlton said it was open without alcohol sales due to the removal of the license. She said the current business is First Stop, which is a small grocery store in a garage.

Ruby Molinari, said she is Chairman of the West County Alcohol Policy Working Group, said they are volunteers who meet monthly with law enforcement and quarterly with ABC, a

representative from Supervisor Gioia's office attends, at times they have a representative from Senator Torlakson's office, and the purpose of the group is work with concerned citizens regarding problem alcohol outlets as well as providing alcohol vendors an opportunity to meet with and discuss their concerns with sheriff, police and ABC agents. She requested that the Commission deny the application due to the prior store at 546 Harbour Way has had nuisance activities which were detrimental to citizens living in the area, the new store will be patronized by the same persons and their activities will continue. The new store is bigger and could attract more of the same type of people, said there has been recent criminal activity in the neighborhood which shows the disregard for law and it has gotten worse and it is a fact that alcohol sales increase criminal activity. She drove by the store several times in the past two weeks and she has seen cars parked up on the sidewalk, the owner cannot control what goes on outside, and when they sell alcohol, and it goes outside and moves around into the neighborhood. She felt the application should be denied as it will not benefit any neighbors or police, except for the owner. She noted it was 4 blocks from the business center on Macdonald and the store there sells alcohol. She said if the CUP is granted, they would like to submit their conditions to the police department, who will pass them onto ABC, as well.

Anthony Allen, Vice President of the Iron Triangle Neighborhood Council, opposed to the transfer of license and approval of the CUP. The Iron Triangle has been and is still suffering from serious social ills, and he asked to do whatever the City can to work toward reversing this negative trend. One more liquor store in the Iron Triangle will not serve the community toward this goal. They serve as magnets that attract loitering for the purpose of drug sales and the purchase of drugs, lead to possible drive-by shootings, territorial wars, homicide, creating dangerous neighborhoods and eventually affecting property values. The applicants came before them about one year ago before the neighborhood council and ask for their support and they were denied. He asked the Commission again to deny the CUP.

Naomi Williams, West County Alcohol Policy Working Group member, said we try to clean up and not get rid of businesses, echoed other's comments, but felt if the applicant moves to a larger store, there will be more alcohol unless conditions can be placed on the business. One condition would be to keep the amount of space the same, even if he obtains the license in the larger store. However, she asked the Commission to deny the CUP and transfer.

Nagi Dobashi, said he is one of the owners next door to 544 Harbour Way, opposed the transfer because of all of the problems, nuisance and criminal activities. The building was transferred from him to his dad and he left the business in his brother's names due to all of the problems that was occurring with the business. So, during the time of the problems and lease they had on there, they could do nothing about it. His brother sold the business to Mr. Almag and at that time, he became the lessee. During his time, they used to receive many letters from the City for complaints from the neighborhood, nuisance, littering, graffiti, and crime. They tried to speak to them about cleaning this up but did not get much done. They even had to put an iron fence on the property to keep people from entering in to the parking, which was not meant for customers. He said they never evicted them from the building, intentionally, they bought the building next door to shut this building down and keep it boarded up. Now, the building is up and running, the store is downstairs running a small market, there is no alcohol at all, no loitering, there are people who ask for alcohol and they go somewhere else, but he questioned why the space of 2,400 square feet needed alcohol. They have the first right according to the grandfathered deed to come forward to the City and apply for a recondition or another license, but they chose not to renew the license.

Commissioner Williams said references were made about someone attempting to buy the former license before it was surrendered, and he asked what had occurred. Mr. Dobashi said they technically do not want the beer and wine license, it affects the building, it affects the area, they used to receive a lot of phone calls from neighbors and they could not do anything about it. **Commissioner Williams** said Mr. Elmashni, the applicant, said they offered \$150,000 to add someone's name to the license and Mr. Dobashi questioned why someone would want to spend that much just to add someone's name to a \$2,000 license.

Ruthwan Dobashi said he is one of the owners of 564 Harbour Way, and resides over the business, he has been there for almost 8 months, has been running the business, said he still gets a lot of previous problem people coming asking for beer and wine, he has been trying to do the best he can to avoid them, and he is doing very well without the beer and wine, so he opposed the CUP because if we do transfer it from one building to the next, it will affect everyone around them because his building will be back to what it was. He said he managed to keep the gate closed because of people hanging inside the yard, they were using the yard and their trees as a toilet, and it really affected them. The owner offered to buy his license from him, but he told him no, that he did not want the license, does not need it, and their lease has expired and he would not renew it unless new conditions are met. If they cannot be met, a new lease cannot be offered. Therefore, several letters were sent to them stating the lease amount would increase to \$6,500 in order for them to maintain the building because they were opposed to conditions. So, he asked the Commission to deny the transfer and CUP.

Aied Dobashi, said he is a property owner, felt the commission should deny the transfer due to constant drug activity, he did not feel safe walking the streets if there were alcohol because it leads to problems, and he assumes that if there were none, the crime rate would be lower and there would be a better relationship with the neighborhood.

Rebuttal – Applicant

Mazen Elmashni said he came from a background where there is no democracy and he felt the downside of letting people speak who lie was not right. He said the store the Dobashi's owns allows four licenses and they have one license. The ABC feels it is not over-concentrated. Secondly, the ABC will take care of the distance, the cost of the license is \$500, and said they need 300 to 400 square feet out of 2,400 square feet, and they understand they cannot have any more than that amount of alcohol.

Rebuttal – Opponent

Nagi Dobashi, said with respect to Mr. Elmashni, he is criticizing what people are saying, they have attempted numerous times to transfer the license, and he feels the problem is their stores are close to each other and if alcohol is involved, it will cause more problems. They could not maintain their store when they had alcohol and he did not know how it could be done with a larger store. He personally would not want any store nearby to sell alcohol, felt they would have good items, but he did not need to sell liquor.

Boardmember Lee said it appears that there is currently an inactive and defunct license at the current location at 564 Harbour Way and if this were to be moved to 544 Harbour Way, it could be rejuvenated? Mr. Dobashi said it could be re-activated but it would have to go through extreme measures. But being the fact that they are the property owners, we have the only chance of putting it back on there, but we do not want to do this. **Boardmember Lee** said if the

Commission denied the application, one liquor license basically disappears from within that street.

Chair Finlay said if a liquor license goes inactive over 120 days, then it is no longer grandfathered in, so she felt this is a license that has not been active at 564 Harbour Way, so there is little chance of getting it re-activated, it does not run with the land any longer, and the question is whether the license is transferable to the new location.

Commissioner Williams asked how long ago was it that the business address changed. Ms. Whales said she could speak on the license; that was surrendered November 29, 2006. **Commissioner Williams** asked if there has been a difference in crime statistics. Lt. Barry said the 2007 crime has gone down up to April, which was attributable to the non-sales of alcohol, while still making a profitable business. They have noticed that alcohol and cigarettes affect the crime. He said the applicant does not understand the grandfather clause and said Chair Finlay was correct in her statements. People do have the right to sell their license to anyone, but he felt it would be almost impossible to have this happen now.

Chair Finlay said she remembers the City Council also put a moratorium on new liquor licenses in the City of Richmond, and Lt. Barry agreed.

Ms. Whales said staff could not make the findings and therefore, staff is recommending the Commission deny the conditional use permit for an ABC license at this location.

Chair Finlay said if the Commission accepts the recommendation to deny the application, it could go to the City Council on appeal. If the Council overturns the Commission's denial, she asked what happens to the license; would it become fully conditioned or would it come back as a reversal and then conditions would need to be reviewed and added to the CUP? City Attorney Privat said it would depend upon how the Council worded their resolution. They could send it back to the Commission for consideration of conditions.

The public hearing was closed.

ACTION: It was M/S (Rao/Lee) to deny CU 1103339 for relocation of an ABC License Type 20 at 544 Harbour Way; unanimously approved.

Chair Finlay said the Planning Commission's decision may be appealed by notifying the City Clerk in writing and paying the appeal fee of \$150, by 5:00 p.m. on Monday, October 15, 2007, stating wherein the Planning Commission's decision is in error. She noted; however, the staff report indicates the appeal timeframe is October 24, which was incorrect.

5. CU/V 1104032 – Easter Hill Senior Housing at 3601-3627 Cutting Boulevard - PUBLIC HEARING to consider a request to construct a mixed use development that will include 24 low-income and senior restricted dwelling units and 6,549 SF of new and existing commercial space at the properties located at 3601-3627 Cutting Boulevard (APNs: 513-152-001 & 513-152-002). The project proposal includes a request for a 35% Density Bonus with City concessions and Exceptions to developments standards required by the Knox Cutting Specific Plan (KCSP). Neighborhood Commercial (KCSP) Zoning District. EastBay Community Development Corp., owner/applicant. Tentative Recommendation: Various

Commissioner Harris said the applicant is a non-profit development corporation that is operated by a church in which he is a member, and he therefore recused himself from participating on the item and left the Chambers during discussion of the item.

Planning Director Richard Mitchell spoke on behalf of Planner Lina Velasco, and briefly described the project, stating consideration has to do with design review permit, a CUP and density bonus with concessions and exceptions to the FAR, the site coverage, minimum landscaping requirements to construct a mixed use development consisting of 24 residential units and 6,400 square feet of commercial space. He said the project was reviewed by the Design Review Board who agreed to recommend approval to the Planning Commission with findings and a series of recommendations and conditions, and requested that should the project be approved, that it go back to Design Review Board for further refinement. He said what drives these are the funding cycles and to accommodate this, the Board wanted to make such a recommendation. He said the building is quite large, its size and density while acceptable within the Knox-Cutting Specific Plan brings the Commission to the question of should it be done. Some exceptions such as parking, could be mitigated if the request to retain the 6,400 square foot commercial space were to be reduced. If the Commission reduces the commercial space down to 5,000 or less square feet, an exception does not need to be made for parking because the requirement would disappear. What this might also do is permit the project to address a concern raised by DRB and staff, which is the necessity to crowd the building to the east and right on the sidewalk at 37th Street. This issue could be addressed by cutting the sides of the commercial section of the building, moving it to the west a bit. He said the sidewalk is a school route and it was important to maintain a site break from 37th Street to Cutting and vice versa. He said the applicant also needs to get to 24 units and even with the exceptions, staff's interpretation of the density bonus leaves the plan at 23 units as the maximum number, and therefore, this would require a Council action in order to get to the 24th unit. From the standpoint of design, this is statistically insignificant; the main issue is size, bulk, and intensity in that location, and what the applicant might do to address this. He said those were the general issues and he turned over the item to Janet Harbin.

Ms. Harbin said the project has been reviewed by the Design Review Board who recommend seeing it again after the Planning Commission reviews the project. Staff was able to convince them given a number of conditions. Ms. Velasco has prepared certain findings in the report and conditions of approval, and therefore, staff's recommendations were included in the report, as well as several options. The applicant is present and would like to make a presentation.

Durelle Ali, East Bay Community Development Corporation, said the corporation owns the property and is the project sponsor for the site. She said the proposed 24 unit facility is designed for very, very low income seniors with provisions for individuals being able to age in place, the units are 100% accessible, the units are proposed for 25% of median income which is one of the very lowest categories as well as 100% affordable at 25% of median incomes as well as the entire property is designated for seniors. So they are actually exceeding the minimum thresholds generally required in order to receive such exceptions and density bonuses. She said they met with the neighborhood surrounding the property, met with the neighborhood council initially who specified at that time that their concern was about whether there was enough room in the individual units to be able to maneuver in wheelchairs. The unit designs would be brought back to show them the space, but in the interim, they have contacted the Planning Department with additional concerns. She said they met with the majority of the neighbors in the 350 foot radius, there were two residents who were not at home with three attempts made, they obtained signatures from all residents which include the single family and single story residents to the north and also the two-story units directly abutting their property as well as two-story buildings

further down on 37th Street. They did not meet any opposition from these residents. They had also pointed out they previously had a letter of support from the neighborhood council, the building has not changed significantly in terms of mass, there was an increase in one unit from what was previously proposed.

Ms. Ali said the reason they are requesting 24 units is because of financial considerations. They were looking at 23 units for much of the period approaching these applications; however, it was upon being contacted by funders who had concerns due to tremendously increased construction costs and that they did not feel the property was feasible. They have a smaller project site; however, they are designing it completely within the zoning ordinance in terms of height and general setbacks. Because the site is a mixed use building, the setbacks are those for the commercial district. They have heard concerns expressed about the need for wider sidewalks along 37th Street so school children and pedestrians can pass through easily, but this is a signalized intersection and as they approach Cutting Boulevard, there is a wider distance from the street to the building onto Cutting than there would be on the collector street next to it. They generally presume anyone crossing the street makes their decision from the curb as opposed to 4-5 feet from the building to the curb, so they feel there is ample visibility there.

She also pointed out with respect to the 24th unit under the density bonus, there are statements within the staff report that the 24th unit would exceed the number of units the City can allow with the density bonus. She said this was not true; the density bonus in the zoning ordinance comes from the State legislature. They are creating this, as pointed out in a recent State Court of Appeals determination on August 28, 2007, that it is to establish a threshold which cities must meet in order to encourage affordable housing. The maximum enacted by the State followed certain increases in the amount of affordability or the number of senior units that are created. We are going far beyond that and again, state law has ruled that not only do cities have the ability to approve density bonuses in excess of the 35%, there is also suggestions that there are no provisions under state law by which cities can deny the density bonus request were the affordability exceeds the minimum threshold required, which applies to both density and parking. She said there are conditions listed which would place tremendous financial burdens on the project and which their architects would be better able to discuss.

Naomi Williams, President of the Pullman Neighborhood Council, said the applicants did present the project and the neighborhood council had approved it. Then, they made changes to the project which made the living quarters much smaller and she felt they were not accessible for wheelchairs or walkers. The parking spaces were decreased from 22 feet down to 16 feet, they had one parking space for every two apartments, so she felt there would not be enough room for parking. Then, the parking area was changed to come out onto 37th Street which she felt was not appropriate. She said Cutting Boulevard was a thoroughfare and they want to upgrade it and not downgrade it, and when too many homes are put in one small spot, the density is raised. She felt the project should simply be cut back as they would need less money needed to borrow to do the project. She asked the Commission to deny the density bonus and questioned whether this was actually State law.

Vice Chair Rao questioned if the applicant first indicated the building would have 23 or 24 units. Ms. Williams said they understood it would be 24 units, but the building would extend over the store. This plan is cut back because it was determined it was not strong enough to build on top of the store. They also need elevators on both ends of the building, and she questioned how this would be done.

Rebuttal – Applicant

Durelle Ali, East Bay Community Development Corporation, said when they looked at financial considerations, they are a non-profit, and they are actually looking at the lowest level of incomes for the properties, so the issue is not one of profit but rather feasibility of doing the project at all. Their other constraint is when they scaled back the building, they did not intend to squash the units together. The units being designed are actually above the HUD standards for low income units that used to be in effect and they are slightly larger, the building is fully accessible, is designed to have extra features necessary by individuals in wheel chairs, and if added conditions are made to the project, they would like those conditions to be made in consideration of the financial impacts to the project as well. She reiterated this is a very, very low income for seniors and addresses the goals and objectives of the general plan, the Knox-Cutting Specific Plan and also addresses many concerns in the zoning ordinance, and she requested approval of the project.

Vice Chair Rao asked if the project would be amended if the Commission allowed only 23 units. Ms. Ali said they would not be able to build the project for 23 units as they would not have funding to build it. **Vice Chair Rao** noted very, very low income and asked what was their income. Ms. Ali said 25% of median income is approximately \$950 per month, which is close to the social security amount being received by working class individuals. She said the project is all rental units and said the affordability requirement is for 55 years based on the funding of it. She said those living in the units would be paying approximately 1/3 of their income with rental subsidies, or about \$300-\$350 per month.

Commissioner Lee asked who were the funders, and Ms. Ali said they are working with the State of California Housing and Community Development Department's Micro-family housing program, who have a tremendous amount of services also being brought to the property. Column Guaranteed is their direct funder and they are the funder of a HUD 221D49 which is basically a HUD guaranteed loan for senior properties. They also have an affordable housing loan grant from the Federal Home Loan Bank. **Commissioner Lee** asked what involvement did Easter Hill United Methodist Church have in this project. Ms. Ali said Easter Hill is a sponsor of the non-profit corporation and this was done to achieve community serving goals from the church itself, but the Church does not have membership on the corporation board, but all boardmembers do happen to be members of the Church. **Commissioner Lee** confirmed that the church is in favor of the proceeding.

Vice Chair Rao asked Ms. Ali to discuss the deadlines for the project. Ms. Ali said they submitted this application in July after starting to work with staff as early as last April on the re-design of the property. The funding cycles are twice per year, they have submitted the application, they wanted to see some modifications and they were concerned about us going past September 30th and they felt they would have originally been at the September 6th Planning Commission meeting, but because of a misunderstanding that they wanted a study session before the Design Review Board and not a regular meeting, they had to wait for another meeting and unfortunately, the second meeting was after the Planning Commission meeting in September. So, they need to get the financing application into them by October 15th. They have commitment from the HUD guaranteed loan and are now going before the multi-family housing program.

Naomi Williams, President of the Pullman Neighborhood Council, said to put up apartments for seniors sounds like a good idea, but her worry is for low, low income, meaning inexpensive property that will not last. She was living in one of the oldest neighborhoods on the south side

and to add more low, low income property for \$950 did not seem low to her. So, it depends on how one looks at it.

Vice Chair Rao confirmed Ms. Williams was making her comments on behalf of the neighborhood council.

Director Richard Mitchell said the Commission has several options before them. He felt this was some of the more challenging aspect of the work the planning department does. The general plan objective is to attempt to provide as broad a range of shelter as possible. There is an effort by the density bonus and other things to try and make it possible for people to construct buildings will meet the lower end of the housing spectrum. The challenging part is how much is enough, how much is too much, are the concessions the City is making have any adverse impacts on the existing community which is a tough call. The applicant has a successful 16,089 square foot operating Thrift Store they do not want to disturb, there is also a request to have a 2,000 foot rentable space between the existing Thrift Store and the proposed building. This is where the flexibility exists to try and give the project and the space a better match up. The problem staff seems to face consistently with these projects is we are always up against an all or nothing proposition. So, it becomes tough for staff to make a recommendation because there are outstanding issues that have been identified which cannot simply be mitigated by saying they will do what they say will be done or something is created by approving the project. So, he felt the building is approvable with the minimal change. He said the Commission does not have the authority to grant that; it will have to be heard by the Council, so staff's recommendation would be to approve the Design Review permit with a reduction of the commercial space to 5,000 square feet or less subject to the conditions, and with that modification, it gives the opportunity to move the building back a bit off of 37th Street, which should effectively take care of the applicant's objective as well as concerns raised through the review process.

EXTEND MEETING

ACTION: It was M/S (Rao/Williams) to extend the meeting at 11:00 p.m. to 11:45 p.m.; unanimously approved.

City Attorney Privat said the City Attorney's office has taken a very close look at the case cited and brought to their attention; the Friends of Lagoon Valley vs. the City of Vacaville. There is a real distinction in the Vacaville ordinance from the Richmond ordinance that is opposite to the views being taken by the applicant. The Vacaville ordinance permitted the City Council to go up to 50%. Richmond's ordinance says, in no uncertain terms, the limit is 35%. So, what the Court of Appeals looked at was the City of Vacaville's authority to do this visa vi the Government Code and the apparent restrictions of 35%. Because the City of Vacaville had the right to go to 50%, it was permissible; however, the Richmond ordinance has a clear limit for a maximum to 35%. He felt it could be addressed through amendment of the City's ordinance or it can be addressed in a variance if the Council or Planning Commission could make the variance finding.

The public hearing was closed.

Chair Finlay said this is a classic issue where it was unfortunate there was not a study session on the item because she felt some of the issue could have been flushed out, but in her opinion, as Mr. Mitchell said, there are a number of outstanding issues and she has said before that she will not pass an agenda item or application until DRB has finally signed off on it. Accepting an application, especially one that is riddled with exceptions, bonuses, variances, and others, is not

appropriate. She suspects some of the issues being raised this evening have to do with issues they could not solve for the applicants. She said she felt there was too much size, bulk and intensity, said there is reduction in the common open space requirement as part of the density bonus, an exception to the FAR, an exception to the maximum building coverage, and an exception to the parking, plus an additional unit which would require an amendment to the ordinance, as well as a request for tandem parking. She said she had not seen an application like this for a long time and felt it was not realistic for an application like this to go through design review and planning within 6 months, and then identify funding cycles and deadlines to meet, which is not a rationale for approval. She said she was not prepared to approve the project because it is not in the best interest of the community. She felt the affordable housing component was needed but not the way the project has been structured. Her own inclination would be to direct the applicant to modify the project design, they have chosen not to do this, and she felt she was placed in a conundrum.

Vice Chair Rao voiced similar concerns, felt the Commission was being rushed to come to a decision because of some unforeseen deadline from their financial institution.

Mr. Mitchell said he spoke to the applicant who indicated that several of the design issues raised have been addressed and wanted an opportunity to present those modifications they have made. He questioned if the Chair wanted them in the record tonight or have the applicant return to address that at a more reasonable meeting hour. **Chair Finlay** felt the applicant needs the DRB to sign off on the project before it comes before the Commission again. If the Commission moves ahead on option 4, the recommendation would be that they modify the proposal, finish up with the DRB, have them meet all city requirements, and return to the Commission to address the matter.

Commissioner Williams agreed and said he shared the same concerns when projects are forced on the Commissions because of funding cycles. He understands there have been alternatives proposed but unwillingness by the applicant due to some financial hardship. He knows there is a need for senior housing, but there also is a need to somehow come together and get it done. He felt everyone wants to see the project go through, but he is not comfortable in making the decision under such circumstances because there is a variety of different issues that needs some tweaking before this is done. The Commission has been in this position in the past and tried to resolve it over time, but he hoped there was a way to accomplish this.

ACTION: It was M/S (Rao/Williams) that the Planning Commission directs the applicant to modify the project's design and revise the project using limited exceptions; unanimously approved.

Mr. Mitchell said the applicant is requesting the Commission rescind its action, which was action 4; to modify the project design, and that the Commission move to action 5, which would be to deny the project outright, which they feel is an appealable action. They do not feel the direction given is an appealable action.

Chair Finlay questioned if the Commission wanted to rescind their prior motion. She did not want the project denied, but reworked. **Commissioners Rao** and **Williams** indicated they did not want to deny the project. **Commission Lee** said he favored denying it.

7. **ST 1103412 – Street Vacation for Joy Avenue between Factory Street and Essex Avenue** - PUBLIC HEARING to consider a request to vacate and abandon for public purposes Joy Avenue between Factory Street and Essex Avenue (adjacent to APNs: 561-130-014, 007, 010). M-2 (Light Industrial) Zoning District. City of Richmond, owner; American Standard Properties, applicant. Tentative Recommendation: Recommend Conditional Approval to City Council.

Commissioner Harris returned to the dais and participated in the remainder of the meeting.

Chair Finlay said she asked for the item to be removed from the Consent Calendar was due to the question over ownership and the responsibility for maintenance of the program.

Janet Harbin said the subject right-of-way to be abandoned is the 6,653 square foot street shown on paper only and is not an improved street, per se. It is shown on the location map in Attachment 1 to the staff report. The subject portion of the street is 40 feet wide and 170 feet in length and based on the vacation map provided in Exhibit A and letters received from other agencies and utility companies, there are no water, telephone, sewer or storm drain lines running through or above the street; however, there is an existing overhead power line used by PG&E. The applicant is requesting the City vacate and abandon the street right-of-way between Factory Street and Essex Avenue in order to take care of dumping, overgrown weeds and staff feels it would be better for the street to be vacated and them to maintain and use the property. Staff has prepared findings and recommendations. Staff received one letter regarding the vacation, but that person was unable to be in attendance, which discusses the fact that American Standard Properties is the owner of approximately an 8-acre property located at 1080-1099 Essex Avenue and 1085 and 1061 Factory Street, adjacent to the area to be vacated. Earlier, there was a member of the public who also indicated he owned part of the property.

Chair Finlay said where there were multiple owners abutting the vacated parcel, letters of acceptance and responsibility were given, or something conveying the right, which she felt was missing as part of the staff report. She confirmed there was one speaker on the matter.

Public Comments:

Dennis Chilton, said he owns the property that backs up from Essex back to Joy Street and simply asks what would be done with the property.

Ms. Harbin said the request to abandon the street right-of-way, and the City would be giving up that property and it would be divided between the three properties adjacent to the right-of-way abandonment. If Mr. Chilton's property is adjacent to the area to be abandoned, he would receive an equal amount of the abandoned property, and he would assume the responsibility for the care and maintenance of the vacated street. Mr. Chilton said he thought the City owns the small park on the corner which runs up to the street and American Standard's property was on the other side.

Chair Finlay said clearly, what was needed was consent from the other two owners either saying they want to accept the responsibility or not and an agreement with Standard Pacific to maintain the property. Ms. Harbin agreed to provide clarification on the matter and agreed to contact Mr. Chilton as a property owner. **Chair Finlay** said the City owns a portion, Mr. Chilton owns a portion and Standard Pacific owns a portion, and she felt the City needed to vacate its portion, as well.

Commissioner Lee also confirmed Mr. Chilton would be subject to an increase in property taxes.

ACTION: It was M/S (Harris/Rao) to hold over ST 103412 to November 1, 2007; unanimously approved.

COMMISSION BUSINESS

8. Reports of Officers, Commissioners and Staff

Planning Director Richard Mitchell said the General Plan Advisory Committee met last night, they are working through the alternatives to develop three levels of land use that would be a high, medium and low level. The Committee is in the process of attempting to create that programming, which would then go to the City Council for review.

Vice Chair Rao referred to DRB and Planning Commission merger status. Mr. Mitchell said the Council is still expecting the bodies to be merged by the end of the year. Much is dependent upon design standards which are currently being done, part of it has to do with designing the modified meeting process. Staff expects to go to Council and requesting more time, as a number of draft ordinances have been prepared, but staff is still working out how the joined body would operate and the community has a lot of input to offer on it. They are proposing a series of community meetings to gather than input because people are eager to provide it, and then based upon this, staff will feed this back into the recommendations to the Council.

Vice Chair Rao said he remembered some Commissioners were not going to stay on the Commission after December 31, 2007.

Commissioner Lee said he and Vice Chair Rao attended the CCAPA Conference in San Jose earlier in the week, they had sat in on a session presentation by Alan Wolken and Richard Mitchell which was enlightening. Also, he asked to modify how Commissioners receive their mail, which has been delayed.

Vice Chair Rao agreed the conference was great and said this was the highest attended conference at 1850 people attending. The session rooms were easily accessible and he spoke of the good relationships with Richmond City staff and city leaders.

Chair Finlay thanked Vice Chair Rao for acting as Chair at the last Commission meeting. She requested an update on when the Commission may hear the Chevron matter, and Mr. Mitchell said the soonest would be in November. There is still work being done on the environmental document in order to prepare full and complete answers to comments and questions that have come in. **Chair Finlay** said Mr. Rhoda Primack was with Richmond for many years, was involved with the Masters Theater, who passed away recently and asked that the meeting be adjourned in her honor.

Brown Act – Public Forum

James McDaniel, asked not to change or infringe on the City's hillside ordinance. He felt it was the only thing that protects their neighborhoods.

Adjournment

The meeting was adjourned at 11:25 p.m. in memory of Rhoda Primack.
