

**PLANNING COMMISSION REGULAR MEETING
COUNCIL CHAMBERS, RICHMOND CITY HALL**

450 Civic Center Drive, Richmond, CA
May 3, 2012
6:30 p.m.

COMMISSION MEMBERS

Charles Duncan, Chair
Jeff Lee, Secretary
Ben Choi
Roberto Reyes

Sheryl Lane, Vice Chair
Carol Teltschick-Fall
Andrés Soto

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

Vice Chair Lane led in the Pledge of Allegiance.

ROLL CALL

Present: Chair Duncan, Vice Chair Lane; Secretary Lee; Commissioners Choi, Reyes (arrived late), Soto (left at 7:15 p.m.) and Teltschick-Fall

Absent: None

INTRODUCTIONS

Staff Present: Kieron Slaughter, Bruce Soublet, Lina Velasco, and Richard Mitchell

MINUTES

March 1, 2012 Minutes

Commissioner Teltschick-Fall referred to page 4, 4th paragraph, and “messaging tool” and Mr. Slaughter said he had asked staff to forward the link to the PowerPoint presentation from the Partners for Smart Growth Conference, and agreed to re-forward this again to Commissioners.

ACTION: It was M/S (Lane/Soto) to approve the minutes of March 1, 2012; unanimously carried (Choi and Lee abstain; Reyes absent).

Chair Duncan provided an overview of meeting procedures for speaker registration, public comment and public hearing functions. He said items approved by the Commission may be appealed in writing to the City Clerk by Monday, May 14, 2012, by 5:00 p.m. and as needed, announced the appeal process after each affected item.

CONSENT CALENDAR

Chair Duncan reported there are four Consent Calendar items on the agenda; Items 2, 3, 4 and 5. He asked if any members of the Commission, staff or public wished to pull either of these items. He noted that Item 5 is requested to be held over.

A member of the public requested removal of Item 2.

Chair Duncan said Planning staff has noted an error in Item 3 in its hours of operation. He said the correct hours of operation are from 9:00 AM to 7:00 PM daily. Item 4's hours of operation are corrected to be from 5:00 AM to 9:00 PM daily.

ACTION: It was M/S (Soto/Teltschick-Fall) to approve the Consent Calendar consisting of Items 3, 4, and 5; unanimously carried.

Consent Calendar Items Approved:

3. **PLN12-04.4: Taqueria El Agricultor** - PUBLIC HEARING to consider renewal of a Conditional Use Permit to operate an existing outdoor vendor at 915 West Cutting Blvd. (APN: 550-012-006). C-2, General Commercial District. Mt. Zion Enterprise, owner; Cornelio Navarro, applicant. Planner: Hector Rojas. Tentative Recommendation: Conditional Approval.
4. **PLN12-079: Good Luck Catering Truck** - PUBLIC HEARING to consider a Conditional Use Permit to operate a new outdoor vendor at 915 West Cutting Blvd. (APN: 550-012-006). C-2, General Commercial District. Mt. Zion Enterprise, owner; Suzanne Jamila Nguyen, applicant. Planner: Hector Rojas. Tentative Recommendation: Conditional Approval.
5. **PLN12-098: Proposed Text Changes To Richmond Municipal Code Definition For Transitional Housing** - PUBLIC HEARING to correct text discrepancies between the California Housing Code and the City of Richmond Municipal Code, Section 15.04.020, regarding definitions for transitional housing. Staff proposes a zoning text amendment to correct these errors and omissions to bring the local ordinance in conformance with State law. Planner: Jonelyn Whales. Tentative Recommendation: Hold Over to 6/7/2012.

BROWN ACT – PUBLIC FORUM - None

1. **CU 93-35: Heads Automotive Auto Repair** - PUBLIC HEARING to consider initiation of a revocation of a Conditional Use Permit for an auto repair facility at 1333 Cutting Blvd. (APN: 544-240-012). C-1, Neighborhood Commercial District. Fundamental LLC, owner; City of Richmond, applicant. Planner: Lina Velasco. Tentative Recommendation: Direct Staff to Return in Six Months.

Senior Planner Lina Velasco gave the staff report, stating the item was continued from the April 5th Commission meeting. The item was to discuss whether or not there was sufficient evidence to consider revocation of the CUP. At the close of the April 5th hearing, the Commission directed staff to work with the property and business owners to continue to correct violations and to report back at tonight's meeting. Direction related to several follow-up inspections, some of which were scheduled soon after the meeting. Those inspections are summarized in the staff report and the business and property owners have corrected all violations identified on site, which she briefly described.

It is staff's recommendation to continue to monitor operations at the site, have staff report back in six months, and both the business owner and property owner are in agreement with this recommendation.

Chow Chen, owner of the property, Orinda, thanked the City for its cooperation, said they fixed all problems, and Ms. Velasco was provided with pictures of the replaced fence which was coordinated through the City's Parks Department.

Commissioner Teltschick-Fall referred to the previous versus current photographs and noted the significant improvement. She asked if there were any neighboring businesses or residents who have provided feedback of the improvements. Mr. Chen said his only neighbor is the methadone clinic and he did not speak with them.

Donald Head, business owner, thanked the Commission and City staff for giving him another chance, for being able to have time to correct violations and that said he will continue to maintain the property.

Secretary Lee thanked Mr. Head for addressing the violations.

Commissioner Soto said he appreciates the clean-up and in following up on his concerns from the last meeting, he hoped Mr. Head remains diligent in maintaining the property and said he would address staff in how they plan on following up with monitoring.

Noted Present:

Commissioner Reyes was noted present at 6:47 p.m.

Commissioner Reyes thanked Mr. Head in meeting conditions and said that problems, once fixed, are the beginning of new policy in moving forward.

Donald Head, Sr., said he has been operating automotive businesses in Richmond for 30 years and he intends to monitor his son's business to ensure it is maintained well. He said most of the blame is his, as he was sick and his son was having difficulty helping him while running the business.

Ms. Velasco, in addressing Commissioner Soto's question about monitoring, said a plan has been developed with the Code Enforcement Officer, who has agreed to do a monthly inspection of the site and if any issues arise, these will be brought to the attention of the responsible enforcement agency. Staff will also report back to the Commission in six months.

The public hearing was closed.

<p>ACTION: It was M/S (Lane/Reyes) to direct staff to return in six months to provide the Planning Commission with a status update on operations of the existing auto repair facility and its compliance with the CUP conditions of approval; unanimously carried.</p>

Item Removed from the Consent Calendar:

2. **PLN11-625: San Pablo Avenue Supermarket Renovation** - PUBLIC HEARING to consider a Conditional Use Permit to operate a supermarket with alcohol sales and a Design

Review Permit to renovate the existing commercial building and parking lot at 12010 San Pablo Ave. (APN: 501-241-002, 010, 012, 013,014 and 015). C-2, General Commercial District. Antonio Carrico, owner; Amy Dy, applicant. Planner: Kieron Slaughter. Tentative Recommendation: Conditional Approval.

Assistant Planner Kieron Slaughter gave the staff report, described the request and background of the site, existing structures, prior use as a supermarket and experience of vandalism and code enforcement violations. On April 11th, the DRB heard numerous proposed improvements and enhancements of the site and voted unanimously to approve the design review permit to the Planning Commission. The DRB made 42 suggestions, including conditional approval which is noted as Attachment 4. The applicant has agreed to implement 23 of the proposed revisions as reflected in the revised project plans. The applicant also requests the Planning Commission remove Condition 4 requiring the applicant to return to the DRB.

Mr. Slaughter described staff's zoning analysis, said the applicant seeks a Type 21 general ABC license to allow the sale of beer, wine and spirits for off-site consumption which triggers the CUP. The proposed use is also consistent with the 1994 General Plan and meets General Plan Goal LU-A, accomplishes EDF.1, the applicant plans to exceed landscaping requirements by providing 14,062 square feet of landscaping and 45 trees. The applicant proposes 132 parking spaces which meets the requirements of the zoning ordinance. Three comments were received, including a letter of support from The Friends of Five Creek during the DRB phase. The comments supported the project, but requested increased landscaping, pedestrian safety enhancements and bicycle amenities. In addition, Naomi Williams, of the Contra Costa Alcohol Policy Working Group (Attachment 6) commented on the CUP and several conditions of approval related to alcohol sales were added to address concerns; notably conditions 16 through 24, and that whoever the supermarket tenant is that they be made to return to the Planning Commission after one year of operation.

The project is in the Richmond Heights Neighborhood Council area. The applicant attended a meeting on March 5, 2012 and the North and East Neighborhood Council on April 25, 2012, and staff has not yet received correspondence. However, an email was received from the North and East Neighborhood Council voicing support of the project.

The project meets and exceeds standards of the C-2 District, the project will improve the visual character of the area, and that design and enhancements will result in an attractive, vibrant and safe supermarket in a visually prominent location. The project will enhance the vacant structure with updated exterior treatments, lighting, signage and landscaping and will improve a blighted property, reducing vandalism and illegal dumping that is occurring on the site. It will also offer tax revenue and employment opportunities for the City. Staff recommends the Planning Commission approve the requested design review permit and CUP based on findings and statements of fact.

Secretary Lee asked staff to explain the CUP versus the permitted use process, which Mr. Slaughter noted there is a list of uses included in the general commercial zone district which would be permitted as an over-the-counter permit. Architectural upgrades are voluntary. If it was a permitted use, it would be up to the owner as to whether changes would be made and it would be a DRB issue only.

Commissioner Soto said he was contacted by Mr. Englehart representing the owner and said it seems the applicant is trying to upgrade the building to make it more marketable. They discussed the variety of potential lessees that could occupy the building. What seems strange to

him is that they are seeking to obtain the ABC license prior to having a tenant, which means it goes with the facility. Mr. Slaughter noted this was requested by the owner and applicant in a strategy to prepare the site for all thresholds possible to make it more attractive to tenants. This is not a new process and it has been done with CU96-10 for the Pacific East Mall. Across the street at the empty former Safeway, there is still an active ABC license that runs with the land until the owner decides not to renew it. This practice is not uncommon; the owner has the use permit on the land and different tenants can utilize that use permit.

Commissioner Soto said knowing the history of the over-concentration process, given alcohol control advocates, this then becomes a problematic enforcement process once there are violations, unless the ABC focuses on the business. Mr. Slaughter added that when dealing with a 32,000 square foot building, he does not see turnover occurring where a national retailer would come in with higher standards. The new regulatory unit of the City would also be responsible for enforcement of cannabis clubs as well as ABC licenses. Staff also added numerous strict conditions on what could be sold, as well. In addition, the tenant is required to return to the Commission after one year of operating and the Commission could review any issues.

Commissioner Soto referred to restrictions on malt beverages' and various alcohol contents, and said this would eliminate the sale of many Belgian ales which are higher end products which seems overly restrictive. Similarly, wine alcohol content of 14% by volume and less in corked bottles and aged for at least two years, now the industry is moving towards screw cap wines. Also, generally white wines are not aged two years in the barrel. Therefore, some higher end product lines could be eliminated by conditions and he would like to see these conditions revised. Mr. Slaughter said the Planning Commission could eliminate or modify conditions and noted these come from the Director's standard list of conditions that may be added to a project.

Assistant City Attorney Bruce Soublet said what the Commission would be allowing the owner is the option to apply for an ABC permit for this site. ABC will decide whether they receive the permit and what other additional conditions they might want to place on the permit. Without the approval of the Commission, the owner could not go to ABC to apply. The City is more or less indicating that they are able to apply for a license.

Commissioner Teltschick-Fall said the report indicates that the ABC permit condition fails the criteria because it constitutes undue concentration in the neighborhood, and she asked why the Commission should recommend the owner applying for an ABC license. Mr. Slaughter said staff made several findings that support granting the ability to apply for the license, which is not uncommon. Many standards were set years ago as to the number of licenses permitted. He noted that there are 16 businesses for the Pacific East Mall that have licenses, but only 8 were permitted in the census tract. It is not uncommon that a district will have more licenses than ABC prescribes, but they give the City the ability to make those findings and grant the ability to apply for the license anyway.

Commissioner Teltschick-Fall said given the current situation of the abandoned building, there is loitering there, and she did not believe it would be wise to grant any more CUPs for the ability to apply for ABC licenses. If the wrong establishment locates there, she asked if it was harder to remove the ABC license approval than simply not granting it initially. Mr. Slaughter noted it takes two meetings by the Planning Commission to revoke a license or permit. They have a good working relationship with code enforcement and there is also a new regulatory unit. Staff feels that it is the way to move forward by giving the benefit of the doubt for a business to

succeed. He said the Commission has processed many ABC licenses in census tracts that have over-concentration, but it is the Commission's purview.

Commissioner Teltschick-Fall said she hopes code enforcement will be active in the site location, but based on history, there has been little code enforcement that has made any difference, and she described the excessive blight conditions that many people have reported.

Commissioner Reyes echoed concerns expressed regarding ABC licensing, but he has followed big box store operators and their interests to support workers, families and diversity. Richmond is watchful and if the tenant is a big box operator, he would like to know this. He asked what has changed recently that would bring a supermarket tenant into the site, such as a Wal-Mart. Mr. Mitchell said the vision for the site is to see this site turned into a higher density mixed use development. The market for this has not recovered. The other thing that has changed is the model for supermarkets seems to be changing, as there is the emergence of small and medium sized grocery stores that look at these types of sites, such as Fresh N Easy and other operators.

Commissioner Reyes said in terms of fending off problems, the last thing they would want is a picket line and questioned if there were discussions around honoring unionized labor. Mr. Slaughter said staff's responsibility is to evaluate the project based on its merits and whether it can make the findings, and not its brand or corporate business practices. What has also changed is that the owner and applicant have decided to take the initiative to have all entitlements in place ahead of time to make the site attractive for potential tenants.

Commissioner Reyes questioned what was planned for the site across the street, and Mr. Mitchell noted that the site across the street is a separate issue. Safeway moved out and on that site there is a deed restriction such that another grocery store cannot come in and the site is being marketed to something other than grocery. Commissioner Reyes said it is important that the City looks at the bigger picture and ensure the area is pedestrian-friendly, safe, and he suggested the item may require more time for consideration.

Vice Chair Lane said one concern expressed is how common it is to evaluate a proposal for a site without understanding what business would specifically go in the site. She asked what the purview is of the Planning Commission, given that the new General Plan speaks specifically to issues involving quality jobs and workers conditions, understanding this is not staff's purview. Mr. Slaughter said the applicant can speak to the entitlement process, but it is fairly common for owners to improve empty store shell sites for either expansion of an existing use or to ready a site for a new use, and again used the example of the Pacific East Mall. He felt this is ideal because staff is supposed to be evaluating the project on its merits and not necessarily any brand, and he believes it is more important not to know who the tenant will be. One downfall of this is that the City does not know specifics, but he has added conditions and the Commission can amend any, as needed.

Ms. Velasco added that there have been several projects, such as the BART garage under construction. This project was approved with 17,000 square feet of commercial space. No tenants were disclosed. Certain uses were allowed and if conditional uses are proposed, they would need to come to the Planning Commission individually. She also said the 12th Street/Macdonald project that included 35,000 square feet of retail space had no specific users identified. In terms of the Planning Commission's responsibility, in looking at the administrative and enforcement procedures, the Planning Commission "shall approve or conditionally approve applications for conditional use permit which are consistent with the Richmond General Plan,

the specific purposes of the base or overlay zoning district in which the subject site is located and the provisions of this chapter.”

Commissioner Teltschick-Fall referred to the visioning workshops held for the Livable Corridor project with the site as a cornerstone property as a forward-looking vision for San Pablo and Macdonald, how soon would the form based code be put into effect, and how would these affect the design suggestions and use for this site. Ms. Velasco said the Richmond Livable Corridors project would be integrated into the future zoning update. Currently, is drafting the charette summary document compiling the community comments received for the visioning of the corridors which would guide development of the form based code. The draft is anticipated to be complete at the end of the year which would go through a review process by City bodies, staff and public review and comment. They anticipate the Code would hopefully be adopted about this time next year. In terms of how this would impact the site, this would be new regulations for future development. It does not require existing property owners to upgrade their properties to those standards, but future projects would be evaluated against that code.

Commissioner Teltschick-Fall asked how the project would measure up against the vision for the Richmond Livable Corridors project. Ms. Velasco said the area is currently seen as an activity node where the City would like a high density mixed-use development. What this project does is provide opportunity for future development along the corridor because there will be a parking lot that could be modified in the future should there be demand for additional development. While the project does not go as far as the vision anticipates, it does provide for future opportunity and development of the parking lot.

Commissioner Reyes asked and confirmed the applicant was aware of the Richmond Livable Corridors project and met with Opticos Design, the consultant working on the project. Discussions were held with the owner and suggestions were provided at the neighborhood council meeting that have been incorporated into the project.

Secretary Lee referred to the potential development of something else in the parking lot, he spoke with Mr. Englehart about this and why they were going to remove the restaurant. His impression is that a supermarket of this size would require the entire parking lot. Mr. Slaughter said the applicant is seeking the highest parking to square footage ratio they can accomplish and they are at 4:1000. If there were future development and if the site evolves, the City would zone it to accommodate those changes for mixed use, and parking could vary to accommodate new uses. He also commented that there are setback constraints near Baxter creek.

Chair Duncan stated he was disappointed in the design review process. The DRB floated a series of conditions that were then taken and selectively stripped. The conditions that come to the Planning Commission are a shadow of what was floated. One thing the Commission struggled with for years in Richmond is the appearance and scale of box stores. Often schemes have front doors and elevations that face the parking lot and what the DRB was struggling with is the fact that there is a major elevation along San Pablo Avenue that has not been treated. While they have attempted to do something since the April 11th DRB meeting, it is his opinion that it is shallow and does not go as far as the intent of the DRB to make at least two elevations from the parking lot and along San Pablo Avenue. He also heard from the DRB that they were advised they had one meeting in which to make a decision. He said he was on the DRB 10 years ago and struggled with time limits in a similar situation. They asked the Attorney's office at the time to make a ruling on what constituted a hearing. They were told by Malcolm Hunter and Judith Trice that it was two meetings, and this has never changed. Mr. Slaughter stated the DRB added one condition of approval, which is the condition to return to the DRB after the

Commission meeting. The 41 comments were all comments and suggestions and not conditions. Therefore, the applicant did their best to accommodate those and added 23 of them. Regarding the requirement for one meeting, the zoning code states that any action requiring a CUP and design review permit shall be heard in one meeting.

Chair Duncan said he was not sure the opinions were codified but remembered seeing it in writing and them both defining the meeting as two sessions. Assistant City Attorney Soublet said this decision may precede his time, but Mr. Privat reviewed the report regarding this matter and is in agreement with it. It appears that the requirement is for one meeting at this time.

Chair Duncan asked staff to track down the correspondence from that time if possible, and he would hate that the DRB lost an opportunity to do their job because of a misunderstanding. Mr. Soublet said if staff can locate it, it will be provided to the Commission; however, it will be reviewed by current staff.

Chair Duncan questioned the prognosis for reducing some of the parking, despite the applicant is asking for the maximum. He suggested displacing on-site parking and using some street parking. Mr. Slaughter said staff initially requested 19 parking spaces be reduced by Baxter Creek to create more landscaping and pedestrian amenities, and they arrived at a compromise after discussing what supermarket retailers typically see, and maintained pedestrian walkways and other infrastructure improvements. He said the reduction of parking space of up to 10% may be permitted by the Planning Director or his designee, if a rideshare, transit or incentive program or other transportation system management program is provided, furthermore, parking space reductions up to a maximum of 25% may be permitted if approved by the Planning Commission through a CUP process. He noted there is some on-street parking on Key Boulevard and San Pablo.

Chair Duncan noted total parking is 132 and 13.2 spaces would therefore be lost, He clarified this could be done as part of this CUP process, asked and confirmed there were 14 spaces with a cart return closest to Baxter Creek area, and said he thinks it would be wise to capture more green space.

Secretary Lee asked what the minimum parking the applicant must provide for given this project. Mr. Slaughter stated the zoning ordinance requires 4:1000 square feet which lines up with what is proposed now, and then it can be reduced 10% by the Director and 25% by the Commission from the total amount.

Commissioner Reyes said once the parking has been established, he asked if there is a possibility that whatever business locates there, they could expand the building. Mr. Slaughter said this is possible if they build away from the creek. If they expand up and it was not square footage used for the supermarket, it would not affect it. If it were to encroach and remove some of the parking, it would trigger the need to accommodate parking somewhere. He clarified that with the new General Plan, expansion might be up to 55 feet or taller.

The public hearing was opened.

Public Comments:

Henry Englehart, Colliers International, introduced his associate, Amy Dy with Tate Associates who will act as Mr. Antonio Carrico's technical consultant. He said they do not represent any retailers but rather on behalf of Mr. Carrico and to seek approval of the physical upgrades to the

building and site, approval for conditions of the use permit for use of the building as a supermarket which they believe is the highest and best use of this property. They have no transactions with anybody and for competitive reasons, he is not at liberty to disclose who they are in discussions with, but they want to understand the conditions the City wants the supermarket to operate to. Retailers are cautious and he needs to disclose with the prospective tenants the entitlements and terms of conditions of operating they will be held to. It is not uncommon in the industry to seek master approvals of projects without knowing who the major tenant is.

Amy Dy, Tate Associates, gave a PowerPoint presentation showing the aerial display of the site, the building to be renovated, an empty parking field, a 6100 square foot building that will be demolished, a Chinese restaurant at the corner of Macdonald and San Pablo that is not part of the project. She presented the front elevation and described the replacement using a false wall with stone veneer treatments. Earlier there were comments regarding elevations on San Pablo and said there is minimal visibility on this side facing Baxter Creek. She clarified that they understood that the 4:1000 was the minimum requirement for off street parking by the City. In discussions with prospective tenants, what is usually required for supermarkets is 5:1000. They are exceeding landscaping requirements, providing many trees on site, have two existing driveways on Macdonald Avenue that they are consolidating into one, widening the driveway on San Pablo, adding pedestrian pathways with landscaping as well as two bio swales that will treat runoff, providing bike racks, enhanced landscaping on the Baxter Creek side of the project, and providing new parking lot lighting. Offsite work includes removal and replacement of all sidewalks on San Pablo and Macdonald and Key Boulevard which is a significant investment. They are including a small trail along Baxter Creek as an amenity to the community, with interpretive signage similar to what the City of El Cerrito has, and they are also installing a picnic table. She presented a colored landscape plan overlaid on the aerial map of the site and building elevations. For the front, they have a treatment of a false wall with stone veneer, a row of columns wrapped with stone veneer and a metal green canopy, and noted the color scheme is common for a shopping center.

Chair Duncan referred to color and said it is 100% subjective, He suggested it be left out at this time, given that it relates to a brand. He referred to mechanical equipment on the roof and confirmed none of this equipment works. He said once remodeled, they may be located in various areas, but the applicant balked at doing screening of units stating they were deemed as structural upgrades. He noted structural upgrades would have to be done anyway to relocate or replace mechanical equipment. In fact, screening is much lighter than units, and he disagrees with the statement that screening cannot be done. Mr. Englehart said it was his understanding that the DRB member was asking them to move screening back from the edge. Chair Duncan said if they wind up in the center, screens will have to be moved in at which point engineering will be needed to carry their weight on the roof and screening will be light. Therefore, he asked that screens be done anyway.

Chair Duncan stated there was a statement that bringing the canopy around the 'hot corner' requires a seismic upgrade, which he did not believe was required. He asked to bring the canopy around the corner to unify the elevations seen. He asked whether the applicant would entertain doing this. Ms. Dy said they have discussed wrapping the canopy around with a consultant. Chair Duncan said this; however, does not trigger a seismic upgrade to the building.

Commissioner Reyes referred to the placement of the bike rack, and Ms. Dy noted the rack is located in the front on the sidewalk and displayed it on the plans.

Vice Chair Lane referred to the DRB recommendations and the owner's response. Number 19 on page 2 states that the "hot corner needs work" and Mr. Slaughter briefly described what could be done to enhance the corner and make it more prominent. What is challenging is that the door is on the other side.

Vice Chair Lane said Number 10 relates to satellite parking and she asked and confirmed this was adjacent parking.

Commissioner Teltschick-Fall asked if there was a plan view of the back and side to Key Boulevard. Mr. Slaughter noted these could be found in Attachment 3, page 3 of 3 shows the loading dock photographs.

Commissioner Teltschick-Fall said the back is not only extremely unsightly, but it strikes her as being dangerous. The fencing around it will be removed, but there are no plans for an alternate barrier which borders on the park, which is the loading dock. She noted the amount of pedestrian traffic in the area and voiced concern there is no physical separation that would look attractive. Mr. Englehart said he spoke with Mr. Carrico after the site tour, and they thought of putting a masonry wall where the concrete stops and parking starts. He said this would stop pedestrians from wandering in and also give a nice visual block in this area. It will also not interfere with truck operations. Commissioner Teltschick-Fall said her concern would be the visual quality of whatever is proposed because now the building is a hodge-podge of materials. If a wall is installed there, another wall is needed on the other side of San Pablo by Baxter Creek and the green area, and both need to be consistent in its materials to look attractive. She feels these two sides were short-changed in Design Review and she asked to see further input from a designer as to how this will work together, along with the recommendations by Commissioner Duncan.

Secretary Lee said he heard that the Chinese Restaurant will remain and he confirmed this is not part of the project.

Chair Duncan prefaced his comments on the fact that the applicants scrambled to push this project further along since April 11th, but the DRB is the venue for talking about these points. The Commission deals with land use and validates the design review permit. When it comes to designing, the DRB should address this. He suggested limiting the comments about design. He is very much in favor of sending this back to the DRB per Condition #4.

Secretary Lee said one of the Commission's action items is to approve the design review permit. The Commission can approve it independent of approving the CUP at this time, as well. Chair Duncan agreed, but the Commission should not be discussing design review issues.

Commissioner Teltschick-Fall said she appreciates the site tour and when going inside the building and around the back side of the building, she was taken aback by the amount of clean-up to be done. She is very happy that the owner has taken an interest in cleaning it up. Hazardous materials have been removed, but there are still people sneaking inside the property and she asked how much cleanup is left to get the site up to code. Mr. Englehart said once the physical improvements are agreed to by the Commission, Ms. Dy completes the budgets and then they finish marketing materials for the approved building. The tenants they market this to will be able to envision a renovated building because they have seen it already. Commissioner Teltschick-Fall asked if the inside of the building would be cleaned up, emptied, safe, and impermeable to intruders. Mr. Englehart said they have had to weld doors which have been

pulled apart and they are trying to do everything they can to keep the building as secure as possible.

Mr. Englehart stated, in response to Commissioner Teltschick-Fall's question regarding the status of the Hacienda Restaurant building, they locked up the building and it remains the same as when they closed. Mr. Carrico has had an auctioneer come through, identify restaurant equipment of any value and he will plan to auction those off or donate to charitable organizations. He will then clear all interior construction, do hazardous materials abatement for the ceilings, the drywall and roofing materials and once abated, the building will be worth a shell. He is of the opinion that the big box store has more value as a supermarket along with parking, and it is not cost-effective to keep the Hacienda building. Commissioner Teltschick-Fall asked if Mr. Carrico would consider having a café in the building to compliment the big box store, and Mr. Englehart said the focus has been getting the large former grocery store renovated and available to market and then address the Hacienda restaurant building. However, his recommendation is that it be removed because it is not cost-effective to market it in today's world.

Chair Duncan asked for speakers regarding the project.

Jan Mignone, President of the North and East Neighborhood Council, distributed a letter regarding their last meeting of April 25, 2012 in support of some viable development of the building and regarding opposition to demolition of the restaurant building. Regarding having Wal-Mart or massage parlors locate there, CUP conditions have been added to protect neighborhood rights. She noted there are 4900 Richmond residents in their neighborhood council, stated the City needs the jobs and revenue, and hoped the building could be marketed and developed for the good of nearby residents.

Commissioner Reyes clarified the number of the North and East Neighborhood Council and their residential boundaries with Ms. Mignone and discussed development preferences and support by the community.

Nina Smith said has she lived three blocks from the site for over 25 years. She will comment herself, but said she also has a petition with over 90 signatures from Richmond and El Cerrito residents opposing the project. She is opposed to the issuance of the CUP and would not address design issues. The idea that the Commission is going to approve a 24-hour supermarket is very problematic to the neighborhood. The Safeway operated 24 hours and there was so much crime that they reduced hours. Many people are concerned about this. The second issue has to do with the idea of the process. What will happen is that the Commission will approve a supermarket use regardless of the particular tenant. Staff explained this has been done before, but these are multi-tenant developments, whereas this building will have one presence. Already the neighborhood is up in arms over the tenant possibly being Wal-Mart because they feel tricked; it is not a transparent process, and it will leave the neighborhood feeling manipulated and left out of the process. She is very much opposed to having a Wal-Mart in the neighborhood, given the recent scandals, bribery, labor relations, and hoped that whatever store was approved that they have unionized workers. Any health care that Wal-Mart provides is often unattainable, and people end up going to the County hospitals and clinics which taxpayers end up paying for.

Commissioner Reyes said the rumor of a Wal-Mart going in began in El Cerrito. It is clear that feelings have not changed. Ms. Smith agreed and said this reinforces her point; if Wal-Mart knows there will be public opposition, this makes people feel getting the CUP is an end-run

around public input and there will be picketing. She then read a statement from neighbors into the record regarding concerns of the development being a Wal-Mart, and asked for a condition that the owner may only lease to Wal-Mart after a public hearing and approval by the Commission has been done. She also included an article from U.C. Berkeley Center for Labor Research and Education; "A Downward Push: The Impact of Wal-Mart Stores on Retail Wages and Benefits."

Commissioner Reyes noted Ms. Smith's statements regarding crime with 24 hour operation of Safeway and confirmed that police reports could back up this statement.

Chair Duncan questioned what were hours cut back to, and an audience member answered Safeway was opened up until 11:00 p.m.

Secretary Lee said one statement in Ms. Smith's letter being a grocery store and no sales tax benefit; however, page 2 of the staff report states that "The proposed supermarket will provide new sales tax sources for the City." Mr. Soublet stated not all items sold in grocery stores are groceries and many items are taxed upon. There are also some food items that are taxed. Mr. Slaughter noted that he spoke with Mr. Banuelos of the Finance Department who gave him a rough estimate that the store would generate an estimated \$50,000 to \$100,000 of sales tax to the City per year.

Dennis Hicks said he lives around the corner from the store, is happy that something will develop, but they are not happy with the process. He echoed Ms. Smith's comments, said they do not want a Wal-Mart locate there and feels Richmond deserves more. He voiced opposition to having the store open 24 hours which will be a distraction, noisy, with panhandlers and excess traffic as seen with the previous Safeway Store. He questioned if the City has looked into the transformers on poles in the back of the store which border the creek, and he asked if there should be any containment for them. Before making a decision, he asked that the Commission hold off until there are more answers and a better tenant than Wal-Mart can be found.

Commissioner Reyes asked where Mr. Hicks enjoys shopping, and Mr. Hicks said he likes Safeway and believes in spending his money and shopping locally. However, if Wal-Mart goes in, he would not patron it. Commissioner Reyes pointed out that the nearby neighborhoods need a good local market. Mr. Hicks agreed and thinks the owner and the City should come to a consensus on what kind of tenant locates on the site.

Charles Smith stated for 25 years he has lived 4 blocks from the former Albertsons and he would like to see a new tenant occupy the vacated Albertson's building; however, the community is concerned that a CUP is not an appropriate way to do business. Thanks to a new perspective empowering residents to be full partners with business and City government, people see themselves as stakeholders in the future of Richmond. The process of granting a CUP prevents people from fully participating on an equal footing with developers and/or real estate agents, and the community is instead a bystander which he finds unacceptable. They will not be appeased with the reassurance that there will be a review of the permit one year in the future and residents demand the right to know who is applying and this is where dialogue must begin. Residents said "no thank you" several years ago when they defeated a proposed gas station/mini mart at the northwest corner of Barrett and San Pablo, stopped the mobile food vendor from setting up on the opposite corner sometime later, stopped the use of loud speakers at the old Smith Chrysler car lot, challenged the KFC permit until they guaranteed they would use scrubbers to prevent grease odors from permeating their neighborhood, stopped Safeway

from having extended late hours because of safety, and there was a serious incident where people were beaten in their cars as they were going into Safeway.

Commissioner Reyes asked where Mr. Smith likes to shop. Mr. Smith said he liked to shop at Safeway, noted there are many senior citizens who can walk to that store which was a good thing and he was sorry to see them go.

Commissioner Reyes noted the trail goes all the way to BART and asked if there are any incidents on this trail, and Mr. Smith said yes; they were usually muggings.

Lloyd Goldwasser said he lives within walking distance of the site and said the identity of a business matters and it is troubling this information is not being made available. The issue is emotional but said the City must look before it leaps—they may or may not want to debate labor practices, political philosophy or alcohol sales, but they do want to help the economy. People have done studies about the effect of Wal-Mart on local economies and data shows that they have depressed the economy of communities where they located. A 2010 study from New York concluded that the overwhelming weight of research of Wal-Mart stores shows that they depress area wages and labor benefits contributing to the current decline of good, middle class jobs, it pushes out more retail jobs than it creates, and results in more retail vacancies. There is no indication that smaller Wal-Mart stores located throughout communities diminish these negative trends, but rather their development results in more widespread economic disruption. He spoke of another study in Chicago that found that the probability of going out of business was significantly higher for establishments close to Wal-Mart locations, especially in electronics, toys, office supplies, general merchandise, hardware, home furnishings and drugs. A third study found that Wal-Mart stores reduced retail employment by 2.7%. These studies show a purely economic argument would come down strongly against having a Wal-Mart here and he asked that the City proceed with its eyes open.

Chair Duncan stated Commissioner Choi is fond of saying we cannot pick our neighbors and sometimes this is okay. In principle, what the Commission has is giving a CUP for an apartment building where many tenants come in, the City cannot vet out those that will behave or not behave. On the other hand, Ms. Smith was correct in that this is a fairly large building with one tenant. He asked what is the latitude that the community has vis a vis the Planning Commission to vet that tenant if the CUP were issued. Mr. Mitchell said what the Planning Commission can determine is if they will approve a grocery store in that location or not. There is no way that a City can say Wal-Mart is not okay, but Safeway is okay. These are private companies and the City does not have the authority to make the choice and would lose in court if this were proposed. Mr. Soublet agreed and stated the Commission cannot get into the content of what the potential tenant is, especially when the City is operating on a rumor. The City and Planning Commission have no letter from Wal-Mart saying they are going into that location.

Commissioner Reyes questioned if Wal-Mart was considered a grocery store, and Mr. Soublet said they can operate as a supermarket although their corporate model is big box stores, and they have fairly large supermarket operations.

Vice Chair Lane commented that Wal-Mart does have full size grocery stores without space for other merchandise, and are distinguished as a neighborhood market store.

Commissioner Teltschick-Fall asked if the City has or not have the right to enforce conditions of their General Plan. Mr. Mitchell stated the General Plan is activated by land use changes. If there is a vacant lot after the General Plan takes effect, and someone comes in that wants to

propose a big parking field and a small building, the Commissioner can find this is not consistent. But when there is an existing building the Commission cannot require that the owner tear the building down and put up another building that the General Plan calls for at that point.

Commissioner Reyes said; however, the Commission can hear from the community and support what it wants or does not want. Mr. Mitchell said the Commission can do this, but it is a question of whether the Commission wants the site to remain as it is or do they want it activated according to the proposal with added conditions, such as operating hours. Mr. Soublet added that conditions can also be amended to limit the number of hours, but what the Commission should not do is to make the condition so restrictive that the property owner cannot use the property. This opens the City up for compensating the owner for taking away property rights.

Secretary Lee said he anticipated this discussion and said there is a distinction between a permitted use and what use can operate. A CUP is "an administrative permission for uses not allowed as a matter of right in a district. A use permit is typically required for a use classification having unusual operating characteristics requiring special consideration so that the use may be designed, located and operated compatibly with the use of adjoining properties and in the surrounding area." He said it is hard to do that without knowing what the business will be. He was not sure if a CUP meets all of these criteria as defined in the code without knowing who is operating at the location.

Commissioner Reyes said it was mentioned that the City could be held responsible for restricting what can be done with property and he asked when the last time this happened in Richmond. Mr. Soublet said he could not discuss an example for Richmond, but there are many cases in the U.S. where cities or other public entities which have been sued by property owners because the City took a regulatory action that rendered their property useless. There have been discussions about development properties in the recent past where one concern raised regarding zoning an area as open space.

Mitchell Evan said he lives 4 blocks away from the site and said he also lived in El Cerrito several years ago. He thanked the Commission for taking their job seriously, said there has been talk about whether or not they can talk about specific stores beginning with the letter "W" and everything about the proposal is a big box store which is something he does not want in his neighborhood. He thinks where there have been open processes where citizens can get engaged and involved with proposals, it is possible to get to an optimal use as appropriate for the neighborhood, for the City and for the owner. He would encourage the Commission to use everything possible to get to that optimal use and if the old tools must be used to get to the new vision, he asked to go for the new vision which includes a safe work environment, living wages and benefits, encourage businesses to become environmentally progressive, safe and walkable streets, and collaboration with adjacent jurisdictions. He encouraged the Commission to take the time to get it right.

Commissioner Reyes confirmed that Mr. Evan would like to take more time on the matter to improve upon what could be located on the site.

Commissioner Teltschick-Fall asked what kinds of stores or developments neighbors would welcome. Mr. Evan said they had a brainstorming session with the neighborhood and some suggestions were for a bowling alley, a fitness center, or other things; however, a grocery store that is not a big box store and more in scale with the neighborhood would be a priority. He noted that he spoke with the economist for the Healthy Corridors initiative and he said to support a full

on grocery store, it will mostly be car traffic and something smaller would have a better proportion for foot traffic and a better fit for the neighborhood.

Mr. Mitchell clarified that this is not a big box; a big box is Costco. The Wal-Mart Company owns and operates big box stores. This is an existing store that does not rise to the size of a big box which are 100,000 square feet and larger. Therefore, we should think of this as a shell and unoccupied store and they should not be mixing terms.

Loraine Heart said she purchased a home a little over two years ago she loves her neighborhood and walks her dogs at night. When she first moved there she was excited Safeway was so close, but she witnessed a fight in the store and she stopped going there after 9:00 PM. She is very opposed to a 24 hour business for all reasons voiced already.

Kirk Lumpkin said he lives a couple of blocks away from the site, echoed comments of previous speakers and does not want a Wal-Mart in the neighborhood. As was also pointed out, there have been many studies about how Wal-Mart has depressed the local economy and jobs are not union and leave people poor. He said he has heard staff talking about the stability of these stores which is not in the community's best interest and he thanked Chair Duncan for the possibility of adding space along the creek and removing the parking spaces. He knows the City cannot stop Wal-Mart or any other business from coming in, but the City can be proactive and try to develop both properties and think about the future. The two stores that were on site may not have served the community well and he noted another Safeway was not very far away.

Tony Sustak said he lives in the Richmond Heights neighborhood and goes by the site every day. He thanked City staff for their work to address debris on the site. He also expressed appreciation for comments about the possibility for the site as a grocery site and something that would fit in for a Richmond and El Cerrito gateway, as well as comments about the façade wrapping around and blending more on Key Boulevard. Regarding comments about Wal-Mart, he said this came as more than a rumor. He felt improvements to the building and to the lot could move forward without a CUP and there is nothing from stopping the owner of making improvements without Commission approval.

Mr. Mitchell said the owner could, but based on the owner's experience to fix up the building without a tenant is something not likely to happen.

Commissioner Teltschick-Fall said in her conversations with Mr. Englehart, there is reason to believe that Mr. Carrico would consider working this out in stages and to agree on physical improvements needed to be made and have this information to be able to solicit other businesses. It would also make a stronger presentation on their part to prospective tenants.

Rock Brown, President of the Richmond Heights Neighborhood Council, said the discussion and process overall has been enlightening. The meeting was held and Ms. Velasco was at the same meeting talking about the General Plan. His goal was to be collaborative and it seemed as if they were meeting and learning things for the first time. To him, transparency is important and people need to know what is going on, and whether it is Wal-Mart or Fresh N Easy, the transparency is important for what is proposed to go on the site. The Safeway Store has had issues with people being held up with guns going to their car, a guy running around the store stabbing people, and he is very concerned with putting something open for 24 hours and gave examples of crime.

Michael Dewitt said he lives one block south and suggested there be a latitude line; put another grocery store in, he will continue going 4 blocks south to the Safeway in a much safer area. The second comment is about vision for the two lots and the phrase, the two things are more than the sum of its parts—if the City can work them together and take the time, something wonderful can be done there. He asked if people remember the old El Cerrito Plaza which was blighted, and now he cannot find parking there. They took the time to use the multi-tenant idea and he asked the City to spend time and work the vision and try to develop more than just one single tenant.

Rebuttal – Applicant

Mr. Englehart said there is a lot of concern regarding 24 hour operation. The reason they are requesting it is because they want to make this property and the ability to operate a supermarket is part of the package they want to offer. The same applies to alcohol sales. The standard alcohol package for a grocery store is all they are asking for. However, if safety and alcohol are major concerns, the Commission can condition them to operate up until midnight or commensurate what the industry standards are. And regarding alcohol, as long as the Commission agrees they can return with a real tenant and request the CUP, they can make it part of the package that goes to the industry. He said there were comments made by speakers, but because of complexities of the site, they will have difficulty. The presence of Baxter Creek and the fact that it is an urban waterway constrains development, and they cannot re-locate or move the building closer to the stream or away from it.

Commissioner Teltschick-Fall asked if Mr. Englehart could indicate whether Mr. Carrico would be open to working with the community more about their concerns to make sure he solicits tenants and chooses one that would be welcome in the neighborhood to build a successful reputation and loyalty over time which would benefit him economically. Mr. Englehart said Mr. Carrico's thinking has changed considerably over the last few years and he has asked him to consider things he has previously not considered. In terms of working collaboratively, Mr. Carrico is showing signs of this now. He thinks if arguments make sense to him, he will consider them. As a business man, he would like to set up the property in the best interests of his family and his legacy and he also does not want the community to have hard feelings about how the property is developed. To points earlier, it is his opinion that a supermarket represents the highest and best use in this building and this is why they are seeking the approvals necessary to renovate the building for a supermarket. If it is decided that a supermarket is something the community does not want, he will not be able to convince Mr. Carrico to do the building improvements to put a lesser tenant in there. There are permitted uses and conditionally permitted uses, and Mr. Carrico will have to spend a certain amount of money to attract the permitted uses and will have to spend a lot more to do the supermarket, with the desire for commensurate return. Otherwise, he would authorize him to make a deal with a permitted use which will probably not generate as much rent. To Commissioner Lee's point, the City and neighborhood might well be the loser on this.

Commissioner Teltschick-Fall asked if Mr. Carrico would be open to more forward looking models for this supermarket. She knows there was a way of doing things that worked right for Albertson's and Safeway at that time, but she wondered if he would be open to working more with the community to try to find a business that has a forward-looking model of operating. Mr. Englehart said yes, and regarding sustainable communities, they met on the site with City staff and members of Sustainable Communities and this is where a lot of the ancillary parking lot discussion came about. They did adopt some of the concepts requested by Sustainable Communities. Of importance to them was maintaining the heritage of the mid-century

architecture and signage along the section of San Pablo which they have also tried to incorporate.

Commissioner Teltschick-Fall said while this is not their purview, the actual tenant seems to be of paramount importance and she would hope that Mr. Carrico would be transparent about this and reveal the tenant to the neighborhood. Mr. Englehart said this is why he is before the Commission and the community—to tell him what is required for the building and of Mr. Carrico. If the community wants a supermarket there, they need to know what physical improvements and conditions of operations.

Chair Duncan asked if Mr. Englehart was familiar with the Edgewood Plaza in Palo Alto. He was working on a project this last year which is an Eichler development. The architect was A. Quincy Jones who is very well known. Mr. Englehart said he believes the property was recently owned by John McNellis and he said Mr. McNellis is a client of his. Chair Duncan said while complicated, the site was a Lucky grocery store and the City and developer and community worked together to bring in something other than a corporate grocer. They got Fresh Mart, an east coast grocery store that only sold fresh produce, to come to Palo Alto. The community is thrilled and it took about a year to make it happen and appears to be working very well. Therefore, he thinks Mr. Englehart has heard from the community about what does not work, and while the City cannot preclude Wal-Mart, they can prescribe the CUP in way that is commensurate with the City's needs such as hours, parking, and other things.

Commissioner Reyes thanked Mr. Englehart and asked if he has done another similar project in the County that the Commission could see. Mr. Englehart stated he represented American Stores at the El Cerrito Plaza. It began with meeting with the City to American Stores purchasing 14.6 acres from Federated Department Stores. This gave them standing with the next door owner who was uncooperative and they worked for 3 years to effectuate the development. It was a complicated project and he had to balance the interest of all stakeholders and this is what he has attempted to do with this development. They also worked with Mr. Slaughter on language to densify the site so in fact if the property turns over and there is additional densification that can be done, it will have to be done consistent with the current development restrictions on Baxter Creek.

Rebuttal – Ms. Nina Smith

Nina Smith said she does not see why the Commission needs to approve the CUP at this time and she urged them not to. It seems there is more work to be done and she asked to continue the collaborative effort to come up with something that meets everybody's needs. There is suspicion that this is a ploy to bring something in and disempower the community.

Mr. Slaughter gave staff's summation and noted the application was received on December 11, 2011. Staff sent notification to all department managers, including the City of El Cerrito soliciting input. The applicant attended two neighborhood council meetings, met with the Livable Corridors' consultant team and the process has been transparent. All documents have been available on the City's website as well. In addition, the plans were made available early on to the DRB subcommittee to review the project and staff met with them. Staff still recommends approval of PLN11-625.

The public hearing was closed.

Chair Duncan said the project is somewhat unusual in that the Commission is asked to approve the CUP without knowing who the tenant is. They are fortunate to know the type of business which provides additional information by which to make a decision. This has always been a grocery store. It could be a good grocery store again and there is an opportunity here where this may lie fallow for several years. Wal-Mart is frankly not the issue and the Commission can prescribe this in a way that benefits and is commensurate with the community's desires and requests. To simply throw away this opportunity is a mistake and he suggested giving it a chance. In addition, the design is simply not there yet. He hears rolling suggestions which is not a good way to design things. Therefore, he would advocate for the CUP with additional conditions; to send this back to the DRB to complete the design and working with the developer relative to costs.

Commissioner Choi said this is a difficult situation as the Commission does not know what the suitor looks like. He enjoyed the public comments and did not think it was as easy to attract a synergistic climate that we hold as ideal, but this said, the developer is active on this front. He does say we do not get to choose our neighbors, but in this situation, they need to get this space to a point where it is attractive to the best suitors and this is not cheap and the applicant needs assurances. This said, if Wal-Mart was trying to get in somewhere, it would look something like this space, but he is leaning towards public sentiment given that people think the Commission should wait for a better solution.

Vice Chair Lane echoed Commissioner Choi's comments, appreciates the public comments, and she can identify most all grocery stores that are now vacant. She thinks there is definitely a need and value for a grocery store at the site. It does concern her and she thinks identity of the tenant does matter because the tenant has certain values, jobs, and benefits they provide to the community. The City's new General Plan does emphasize looking at the City in a holistic manner and from a community health stand point this includes a range of things. Regarding 24 hour operation, the Commission should be open to reduce those hours and she would ask that hours be set to something more reasonable. Regarding design review, she understands that the applicant submitted the application in December, but to clean up loose ends, it should not be a problem to return to the DRB.

Secretary Lee said he tends to agree with many comments of the Vice Chair. Having read the definition of a CUP, he is not comfortable in granting it without knowing who will locate at the site. He thinks it is incumbent on the Commission to arm Mr. Englehart in successfully marketing the property to various commercial clients. He would like to suggest the Commission approve the design review application which then gives Mr. Englehart conceptually what improvements will be required to market to clients, and to withdraw Condition 4 where the applicant would have to return to DRB. He proposed approving a subset of the request and extract out the CUP portion of it, which retains the ability for the Commission to review the specific project with a specific tenant.

Mr. Mitchell said the Commission is withholding the CUP until they know who the tenant is, and if they do not like whom it is, they may deny the CUP. The Commission must decide on the category which is a grocery store and the Commission can condition the grocery store but cannot discriminate on the basis of who the chosen tenant is. Secretary Lee said he does not agree with this; a grocery store will have different characteristics given their operations. If it was a non-conditional use, then it would be broad. The Commission is considering special characteristics of this application relative to its impact on the community. He would like to give the applicant the concept to move forward and when an applicant comes in, the Commission can consider the CUP.

Mr. Soublet said he agrees with Mr. Mitchell; the Commission either decides whether it wants a grocery store there or not. The applicant has gone through the process, staff has done their work, and the Commission will either grant the CUP with conditions for a supermarket or it will not approve a supermarket at that location regardless of conditions.

Commissioner Teltschick-Fall said she agrees whole-heartedly with comments of Vice Chair Lane and Secretary Lee. She thinks it is clear that Mr. Englehart and Mr. Carrico have opened up considerably in the last few days to work closely with the community. They have cited examples of building collaborative efforts in other places, and it seems like this is what everybody wants—something the neighborhood will welcome. If they do not welcome the establishment they will not shop there and the business will fail. She does not see the sense in pinning the Commission to take it like it is or don't take it. She sees there is opportunity to collaborate and she thinks everybody agrees this is the way to be successful. She was thinking more towards saying they could agree to the physical part of this but not the CUP for an unidentified tenant. However, since the only one that has knowledge of architecture is the Chair, she feels she should defer to him. She would like to do everything to realize the opportunity, work with the owner and the team. She thinks it is a great opportunity for the neighborhood. She does not think it is the neighborhood's responsibility for the way the property was allowed to be run down and now is the time to move forward in a good way. This means more work with the design and architecture, return to the Commission with more work on trying to figure out how the site should work.

Mr. Mitchell added that as staff, they have certain procedures when someone comes to them with a land use proposal. They must try to have the same procedures for everybody who comes. They are also governed by law in terms of what they can and cannot do and a lot of what staff tells the Commission they may not like, but it is what the Commission's role is under the law and they are obligated to tell the Commission what the process and steps will be. When telling an applicant to go back and figure something out and return, he questioned what this means and over what period of time. This is where staff runs into issues with staff's and the Commission's role.

Commissioner Teltschick-Fall clarified that she is not saying to the applicant to figure it out, but her point is that it should be collaborative in ways that other cities and other projects that have been successful. She does not think these are illegal or beyond the purview of what can be done here. She wants to figure out how to make this collaboration happen. Mr. Slaughter questioned whether this was on the design or the characteristics of the architecture. Commissioner Teltschick-Fall said she would like to defer to Chair Duncan in terms of design issues. The Planning Commission would be in charge of the use of the property, concerns of the neighborhood, concerns of the owner and his team, and come up with something that everybody will be content with. Mr. Slaughter questioned whether she was proposing a different use. Commissioner Teltschick-Fall said she thought the development team was willing to come back with a particular tenant in mind after there is more definition to what the needs and possibilities are, and this will take more time. Mr. Slaughter asked if this is after the CUP is approved, as he voiced concern that he would be unable to bring in a tenant for a lease for a use permit they have not been granted. He suggested that as soon as the lease is signed, to have the new tenant come before the Commission, but to ask Mr. Englehart to try and market the property without entitlements would be the reason it sat vacant for years. Alternatively, he could rent it to an auto supply store, a church, or some other permitted use.

Commissioner Teltschick-Fall said they are getting tangled into many details and she asked staff or Commissioners to figure out a way to accomplish what she has described.

Mr. Soublet stated that what he hears and it would be up to the applicant to agree to, is for more time before granting or denying the CUP, to work with the owner to try and get a use in the supermarket area that the community would agree with. He does not think the Commission can legally tell Mr. Englehart to return with a tenant and then the Commission can decide whether to grant the CUP based upon the tenant. His proposal would be to open the public hearing, continue it to another date, and work with the applicant to see if they can come to a melding of the minds in terms of what type of supermarket they want on the site and what conditions they can live with to market it that way.

Chair Duncan said under CUP findings, it states under #2, the location, size, design and operating characteristics of the proposed use will be compatible with and not be detrimental to public health, safety and welfare to persons residing or working or adjacent to the proposed CUP in the surrounding neighborhood. He asked if "operating conditions" refers to a specific tenant based on their business model, or is it germane to the broader issue of a specific use. Mr. Soublet said he thinks it is germane to the broader issue of a specific use. The City can set conditions to shorten hours, make them provide security and other things to alleviate concerns of the neighborhood, but it is more generic as opposed to companies only hiring union employees.

Commissioner Reyes said he shares the sentiment of the community regarding security, particularly around the path. He would like more information from police on the types and numbers of crimes. He could never agree to a one year later clause. While no one is saying union labor must be hired, he knows that the City has established a living wage in the community and he would hope that any tenant that comes in would be represented by some sort of organized body so workers can have health care and work under good conditions. Until he hears from the West County Alcohol Policy group, he would not approve any type of conditional permit. One key Commissioner is not in attendance, and he supported opening the public hearing at another time, to give the community a chance to organize themselves and make their demands without constricting the applicant or representatives.

Chair Duncan said the public hearing is closed, and he would propose splitting the issues of the design review permit and the CUP. This must go back to the DRB and finish the design, but the fact remains that parking is tied to the square footage of the footprint of the box that is not going to change. He made a motion to propose that the project go back to the DRB to finish up designs relative to their concerns and issues raised tonight, particularly with the southeastern portion of the site, loading dock, Baxter Creek area. He would also propose that the Commission give them the opportunity to lose all of the overflow parking to the southeast and go up to the 25%, meaning they do not have to take out 25% of the parking, but they could lose the 15 spaces that are there. This would be a design parameter and codified in the CUP in the future. He never understood why the DRB designs projects and then projects come to the Commission where some of the issues about what they can do obviate what they have already done. It should be the other way around.

Secretary Lee asked for an amendment. He proposed the Commission approve the design review permit and remove Condition #1, which is the conditional use itself, Condition #10, #22, #29, #30, and #31, and leave in Condition #4 which states the applicant shall return to the DRB for final approval of the project plans and landscaping. Chair Duncan said he believed the DRB needs to see the April 30th drawings and these should go to them for review. He noted the 'hot

corner' is not designed, the back of the store is not designed, Baxter Creek is an open question, and there are issues the DRB must address before he could vote for a design review permit.

Commissioner Teltschick-Fall seconded the motion.

ACTION: It was M/S (Duncan/Teltschick-Fall) to propose that the project go back to the DRB to review the April 30th drawings and to finish up designs relative to their concerns and issues raised tonight, particularly with the southeastern portion of the site, loading dock, Baxter Creek area. He would also propose that the Commission give them the opportunity to lose all of the overflow parking to the southeast and go up to the 25%, meaning they do not have to take out 25% of the parking, but they could lose the 15 spaces that are there. This would be a design parameter and codified in the CUP in the future; unanimously carried.

Chair Duncan said the public hearing can be re-opened and the CUP can be considered per Mr. Soublet's suggestion. Mr. Soublet suggested the Commission re-open the public hearing and continue it so that the applicant can go back to the DRB and bring a final plan to the Commission. He noted that the applicant needs to know what they are doing the designs for. They need to know whether there is potential for a supermarket on the site. Chair Duncan and Reyes said they need to leave this open to them.

The public hearing was re-opened.

Mr. Soublet noted it was 10:02 p.m. and he asked for a motion to extend the meeting.

ACTION: It was M/S (Reyes/Lane) to extend the meeting for 20 minutes; unanimously carried.

Ms. Velasco noted that the DRB meets the 4th Wednesday in May, which likely would not allow staff sufficient time to prepare the report for the Commission's June meeting. They could likely schedule a second meeting in June or hold it off until July. Chair Duncan's preference was for a second meeting in June. Commissioners suggested meeting on June 21st. Ms. Velasco said if there are no items on June 7th, that meeting could be canceled and have any items moved to the 21st. Mr. Soublet agreed with this direction.

Chair Duncan referred to the project in Palo Alto and said the supermarket operator came in right at about the same time they got their final EIR, so this is not the situation here. He did see a collaborative effort work very well there, and the developer was very interested in working with the community there. He said to the community that this is a grass roots effort, asked them to be reasonable, and act in everybody's interest.

ACTION: It was M/S (Reyes/Lane) to continue the public hearing to June 21, 2012; unanimously carried.

6. Reports of Officers, Board Members, and Staff

Ms. Velasco reported that staff is beginning to start the Housing Element Update process and anticipates the Commission will soon receive a request to participate in a the stakeholder interviews. They will do phone interviews as well, and interview are currently scheduled for May 30, 2012.

Mr. Mitchell reported that the City Council adopted the bulk of the General Plan. Mr. Rojas will be making modifications and the plan will be effective May 25, 2012. After this, staff will be looking for consistency between zoning and the General Plan and the Housing Element update is the next work project.

Mr. Soublet said his first Planning Commission was very interesting.

Commissioner Choi said the Commission is faced with challenges but it seems people want to move forward.

Vice Chair Lane congratulated the City on adopting the General Plan after six years. She watched the two days of meetings, she felt the Commission did a magnificent job of studying and reviewing the plan and considered what they heard from the community and what was best for the community. Overall, people were fine with it, and she felt that the Planning Commission did a tremendous job. She referred to road diets and discussed the recent bad accidents that have occurred.

Commissioner Teltschick-Fall said she is happy the General Plan has been adopted and is proud of the Commission's work and staff.

Commissioner Reyes said on Tuesday night, the Council unanimously voted to move forward on the Municipal I.D. which means they will lift a blanket of fear from thousands of undocumented people who reside in and around West County. It took over three years and the good thing is that they discovered that Oakland and Los Angeles are looking at Richmond's efforts.

Secretary Lee said when here last, he spoke about being appointed to the Oversight Board of the Successor Agency for the former Redevelopment Agency. They held their first meeting on April 24, 2012. He has been on the Planning Commission for six years and thinks he will not apply for the fourth and final term. He said the June meeting will be his last as a Planning Commissioner for a while as he wants to take on this new challenge.

Chair Duncan said a nominating committee must be formed for their election that occurs in July. It has been two Commissioners in the past. Commissioners Choi and Reyes volunteered to serve as the Nominating Committee.

Adjournment - The meeting was adjourned at 10:15 p.m.