

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

450 Civic Center Drive, Richmond, CA
June 21, 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 6:35 p.m.

Vice Chair Lane led in the Pledge of Allegiance.

ROLL CALL

Present: Chair Duncan, Vice Chair Lane; Secretary Lee (arrived late); Commissioners Choi, Reyes, Soto, and Teltschick-Fall

Absent: None

INTRODUCTIONS

Staff Present: Kieron Slaughter, Carlos Privat, and Lina Velasco

MINUTES

April 5, 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 April 5, 2012; unanimously carried (Lee absent).

May 3, 2012 Minutes:

ACTION: It was M/S (Soto/Lane) to approve the minutes of May 3, 2012; unanimously carried (Lee 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, July 2, 2012, by 5:00 p.m. and as needed, announced the appeal process after each affected item.

CONSENT CALENDAR

Chair Duncan reported there is one item on the Consent Calendar. He asked if any members of the Commission, staff or public wished to pull this item.

ACTION: It was M/S (Reyes/Choi) to approve the Consent Calendar consisting of Item 2; unanimously carried.

Consent Calendar Items Approved:

- 2. PLN12-118: Tanaka Two-Story Addition on Macdonald Avenue** - PUBLIC HEARING to consider a Design Review permit for a proposed two-story, ±533 square foot addition in the rear of the dwelling located at 5224 Macdonald Ave. (APN: 501-202-008). SFR-3, Single-Family Low Density Residential District. Gregory A & Barbara L Tanaka, owners; Jason Kaldis, applicant. Planner: Jonelyn Whales. Tentative Recommendation: Conditional Approval

BROWN ACT – PUBLIC FORUM – No speakers

HOLD OVER ITEM

- 1. PLN11-625: San Pablo Avenue Supermarket Renovation** - PUBLIC HEARING to consider a Conditional Use Permit to operate a supermarket with alcohol sales in an existing commercial building located 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, provided background information on the project, a description of its location and zoning, and said that on April 11, 2012 the DRB recommended approval of the project to the Planning Commission, subject to conditions of approval. At the Planning Commission meeting held on May 3, 2012 the Commission discussed the item and continued the public hearing to June 21, 2012. The Commission requested that in the interim, the applicant work with community stakeholders including the Richmond Heights Neighborhood Council and return to the DRB for final approval of the proposed design. The DRB considered the design review permit at their May 23, 2012 meeting and conditionally approved the proposed design.

Mr. Slaughter noted that since the site has been vacant for 8 years, the applicant is required to comply with current requirements for the zoning district which includes a Conditional Use Permit (CUP) to occupy the existing building with a supermarket and alcohol sales. The proposed supermarket would comply with the minimum off-street parking requirement, exceed the landscaping percentage, and provide an area for unloading merchandise for the supermarket. The land use classification is Medium Intensity Mixed Use, Gateway and/or Community Node and is intended for mid and high rise mixed use development at a major activity center and to serve the community and region.

He stated the use is consistent with General Plan Goal LU-2; Healthy and Viable Neighborhoods, as the project will provide day-to-day shopping needs of local residents as well as Goal HW-2 which is intended to provide additional access to healthy foods.

Comments were received from several residents, the City of El Cerrito and Michelle Itagaki, Chair of the Richmond Economic Commission, emails and letters in favor of the project from the Richmond Chamber of Commerce, and several others opposing the project including a flyer and petition opposing a specific tenant which are included in Attachment 5 of the staff report.

The Macdonald Gateway Collaboration Group was recently formed to seek the best uses for the former Safeway and Albertson's Supermarket sites at Macdonald Avenue and San Pablo and they have been active in expressing concerns and recommendations for the project. A meeting was held with two members of the group and applicant Henry Englehart on June 13, 2012. They explained that the core group was in favor of the property remaining vacant until a mixed use, medium density development as envisioned in some of the General Plan 2030 drawings was proposed, but they also mentioned that several members of their group are in favor of a supermarket if it is occupied by the right tenant. Additionally, comments were provided after the staff report was printed, and provided on the dais for the Commission. One comment from an attorney challenged staff's CEQA analysis which he said could be discussed.

Mr. Slaughter explained that the project is in the Richmond Heights Neighborhood Council area and is also the gateway to the North and East Neighborhood. The applicant attended the Richmond Heights Neighborhood Council meeting on March 5, 2012 and the North and East Neighborhood Council meeting on April 25, 2012. Staff received a letter of support from the North and East dated April 28th, and to this date no email was received from the Richmond Heights Neighborhood Council illustrating their needs and concerns.

In conclusion, staff believes that the proposed project meets or exceeds the development standards of the C-2 General Commercial Zoning District. The project will improve the visual character of the property by renovating and putting to use an existent dormant building and the proposed design and enhancements will result in an attractive, vibrant safe supermarket in a visually prominent location. Staff recommends the Commission approve the CUP based on the findings and statements of fact subject to the recommended conditions of approval contained in the Resolution in Attachment 1.

Vice Chair Lane stated the staff report pointed out that a subcommittee of the DRB and a Planning Commissioner had met, and she asked for a summary of this. Mr. Slaughter stated the DRB was satisfied with the design, approved the project, and asked that fine-tuning details be worked out with the subcommittee which include some of the window features, architectural details, and the location of the screening in the rear being offset by 6 inches.

Commissioner Teltschick-Fall asked staff to display the other two sides of the building, as the Planning Commission was to address some of the visual issues on the Key Boulevard side and safety issues in the back which border on the park. Mr. Slaughter stated there was a discussion on what type of screening to place in the rear; concrete or chain link, and a chain link with slats was agreed upon. There was also discussion and final agreement on lighting along Key Boulevard on the side of the building and screening of the mechanical equipment on top of the building.

Commissioner Teltschick-Fall referred to the CEQA analysis and clarified this would be discussed later in the meeting.

Commissioner Soto clarified that the DRB looks at the physical aesthetics of the building and not the type of business that may go on the site. Mr. Slaughter agreed, and added that the design review permit was approved and not appealed.

Commissioner Soto referred to the letter from Judith Morgan, President and CEO of the Richmond Chamber of Commerce. In her letter she claims that the property has become a magnet for crime. He asked if there were police reports to substantiate this allegation. Mr. Slaughter noted a lot of vandalism has taken place over the years with vandals breaking into the building, stealing copper and metal, as well as graffiti problems. Regarding additional crime, he suggested that residents speak to this and said he did not have any crime statistics from the police department. He suggested staff look up Richmond Crime View and pull statistics during the meeting.

Commissioner Soto said he was more concerned with the allegation that the property is a magnet for crime. Mr. Slaughter said any unoccupied building will typically have people camping out or breaking in, and this is why activating the site would put an end to most of this. Staff forwarded the original notice of the project to the police department and they were concerned with hedges along Baxter Creek and the need for visual connection from San Pablo Avenue. Staff, in response, added the condition for the hedges to be trimmed down regularly to not exceed 3 feet in height .

Commissioner Soto said the Commission also heard they intend to tear down the former Hacienda Restaurant building. From what he has seen, it also seems to be abutting or attached to the Chinese Restaurant on the corner, and he asked what the implications for this building would be given potential construction or demolition. Mr. Slaughter said appropriate measures would be taken to ensure the building is not negatively affected. He added that the DRB recommended screening on the wall once the Hacienda building is demolished, and noted that the building is not attached but abuts the wall. The applicant has proposed putting a living wall type of screening there to shield the wall and the Chinese restaurant would remain.

Commissioner Reyes referred to General Plan consistency and said the Planning Commission added language that would meet the diverse needs of the community in a healthy, friendly and safe way. He said staff worked hard on the project and asked if jobs were looked at in developing the analysis. Mr. Slaughter said they did; there is a section in the report on General Plan consistency and it allows for a wide range of uses. The long-term vision is for some type of mixed use development project to happen here, but in the interim, this is not feasible. The project still meets the General Plan designation and there are several goals it supports. The project would increase safety, economic development and other goals.

Commissioner Reyes said another project is coming next month in the same neighborhood and he had similar questions and would like to make sure everything is given weight and is balanced with what the General Plan proposed for 2030. He would hope that other factors are reviewed closely and asked to include those in the staff reports. Mr. Slaughter referred to page 6 where the items were located, and Commissioner Reyes recognized this but said it did not include some of the things that Richmond residents want, particularly in Richmond neighborhoods.

Chair Duncan noted that the City received late correspondence, particularly a letter that challenges the CEQA analysis from M.R. Wolff Associates, signed by Mark Wolff on behalf of the El Cerrito and Richmond Neighbors. He asked for staff to summarize the letter and address the CEQA aspects. Beyond this, when letters are received late the Commission typically does

not have time to read them. It is also rude and makes the testimony infeasible. Mr. Slaughter asked that the Assistant City Attorney address the matter.

Assistant City Attorney Carlos Privat said the City has held two DRB meetings, a Planning Commission hearing, and the City received a question on the efficacy of the categorical exemption applied to this project. Staff had time to review it and analyze it. While there is no case directly on point, there are several that deal with the categorical exemption, existing facilities, one of which is "Azur Land Reclamation" which had a court reject the exemption where a landfill had been out of use for a significant period of time much like this case. Because there is no contemporaneous existing use and it has been closed for 8 years, it is the City's advice for CEQA to be re-analyzed, and it could be the case for an infill exemption or an Initial Study.

Commissioner Soto said the second part of the letter also deals with the notion of even if it were to nominally qualify for the Class I exemption, this letter claims it would fall under the exception to this exemption and that *"...it shall not be used for an activity where there is reasonable possibility that it could have a significant effect on the environment due to unusual circumstances."* He asked if staff did a similar analysis regarding this assertion. Mr. Privat said that would be the point of an Initial Study; to begin to review those potential impacts.

Commissioner Teltschick-Fall said she knows there have been visioning workshops for the site as part of the specific plans for the two corridors and when these are completed they will result in new zoning designations for the area. She asked how the timing for that will relate to the timing of this additional investigation for CEQA. Ms. Velasco said the Livable Corridors project or the form-based code is anticipated to be in draft form by the end of the year. As part of an Initial Study, there is a land use planning section where consistency with the GP and Zoning will be addressed. A charette summary document will also be completed and brought forward to the Planning Commission for comment.

Chair Duncan said staff's recommendation that there be an Initial Study obviates the Commission's action tonight. Mr. Privat stated that in abundance of caution arising from a potential lawsuit, the City Attorney and CEQA expert's recommendation is for the Planning Commission to direct staff to prepare an Initial Study.

Commissioner Soto suggested opening the public hearing, hearing speakers and continue the item to a specific meeting date. Chair Duncan asked that speakers truncate their comments as there will be another public hearing.

Secretary Lee questioned the timing and speaker protocols of continuing the public hearing, given the need to prepare an Initial Study, and suggested setting speaker guidelines. Mr. Privat recommended that the Commission hear public comments, continue the matter to a date uncertain, and the item could be re-noticed.

Chair Duncan took a poll of those in the audience wishing to speak and those who wanted to wait until the Initial Study is prepared, and the result was equally divided.

Commissioner Soto said he recommended opening the public hearing because the Initial Study will be focused on specific issues relating to CEQA and the public comment may include other aspects of the project.

Chair Duncan explained the definition of an Initial Study for the benefit of audience members.

The public hearing was opened.

Henry Englehart, Colliers International, representing Antonio Carrico and the survivor estate of Mr. Carrico, said Mr. Carrico has passed away and they are now dealing with the trustee which takes things out of the auspices of a man who worked his entire life in Richmond. He said one key thing in the Pledge of Allegiance was "justice for all" and recognized all citizens of a community have a right to the process in reaching a decision. He asked that as the Commission is going through the process of reaching such a decision, he asked to respect the property rights afforded to Americans. It is his opinion that this property was constructed as a supermarket as defined in 1964. It operated as a grocery store and has been vacant. Mr. Carrico made his best efforts in 4 real estate deals which failed to launch for a number of reasons. He suggested to him that to avoid another aborted development opportunity, he should get clear definition on the parameters of entitlement, and the arithmetic and economics involved. He began his career with Mr. Carrico in May 1995 and unfortunately his most recent recommendation was in February 2010 based on Director Mitchell's guidance, which was that a grocery store was a permitted use on this property. He went to market in good faith based on this information, and the information was subsequently changed after the fact. A discretionary definition was added between grocery stores and supermarkets. Subsequent to that, they went to the DRB and fully negotiated an approved project for a conditional use of a supermarket. They have learned that those improvements cost approximately \$4 million.

To Commissioner Teltschick-Fall's point when she asked for a meeting of the collaboration committee, Mr. Englehart said the first project was a mixed use which they now know is physically impossible given the constraints of Baxter Creek. If citizens who are here want to stand on this, he asked them to educate themselves on the situation and ramifications to the City's General Plan. The second part was for him, on behalf of Mr. Carrico, to agree not to lease this property to Wal-Mart Neighborhood Market. He took offense to this because of his moralist and fiduciary responsibility to Mr. Carrico. As a real estate broker, he could not recommend Mr. Carrico restrict his property rights by agreeing to not lease to one of the most successful retail operators in America. He does not stand before the Commission for any retailer but on behalf of Mr. Carrico. For the committee to ask him to entertain something that is probably illegal and not moralistic or professionally acceptable, he found it offensive, and staff rightly excused themselves from the meeting so they would not be party to any collusion in restraint of trade.

Having said this, on December 8th, they submitted an application for renovation of the property. Mr. Carrico built the property in 1964 as a supermarket. They reached agreement with the DRB to approve it and they are seeking definition of the parameters the Commission would like to see in conditions of approval. They ask to recognize and acknowledge the findings necessary for the Commission to provide them with conditions of approval for a CUP that allows them to have a supermarket. He has solicited the interest of every retailer over 20,000 square feet in Northern California and the supermarket use is the most energized and best use for the property. If the Commission does not want a supermarket, he asked that they tell him. If a supermarket is not desired, they are prepared to make a deal with a permitted use for a grocery store as well, but they would like clear direction. In honoring organized labor, Mr. Englehart said he has worked on 30 projects which are anchored by organized union, conventional grocery stores and respects them. In this case, there has been no interest whatsoever by unionized grocery stores and he would be willing to talk with anyone on a privileged basis.

Commissioner Teltschick-Fall asked staff to explain and confirm that mixed use is not allowed because of the proximity to Baxter Creek. Mr. Slaughter said in terms of adding residential on top of the existing building, there are setback requirements of 200 feet from the creek imposed

by the Department of Fish and Game. Therefore, no significant development can take place on top of this building. Something may be able to occur in the parking lot, but Mr. Englehart said that is not penciling out or there is no interest for that, and the highest and best use of the property is a supermarket.

Commissioner Teltschick-Fall acknowledged staff's explanation but said she did not believe it means by definition that the property cannot be used for mixed use. Mr. Englehart said it is impossible within a timeframe that is reasonable for the Commission to ask this estate on an existing building. The Commission would essentially mandate that the building be torn down and rebuilt because it cannot be augmented as it stands. Commissioner Teltschick-Fall questioned the definition of "collaboration" and Mr. Englehart said Webster defines it as a) "working collectively together as in to work together"; and b) "to collaborate or negotiate with an enemy". He said Mr. Carrico has made a proposal to improve the property in the amount of \$4 million as negotiated by the committee's representatives, which to him, shows collaboration.

Commissioner Teltschick-Fall said she did not regard the neighborhood as an enemy. Mr. Englehart said he has enjoyed the work with the neighborhood and committee, and recognized there are disagreements and agreements.

Commissioner Teltschick-Fall said Mr. Englehart had indicated that staff had excused themselves from the collaboration meeting because the neighborhood was asking for a restraint of trade. Mr. Slaughter stated that basically the neighborhood said if Mr. Englehart agrees not to negotiate with Wal-Mart, they will agree not to appeal the project. Mr. Slaughter indicated he would not be a party to this discussion and said he would leave if the discussion continued. The meeting was to discuss the merits of a project which is a supermarket, and not a specific tenant brand or logo. Mr. Englehart was offended by the request but they then went onto discussing the concerns the neighbors had about the project. He confirmed he left and returned and moved to a different location to conclude the meeting.

Commissioner Soto referred to Mr. Englehart's comments of Director Mitchell; that Mr. Mitchell informed him that a supermarket would be a permitted use. Later on, this was clarified that there is a difference between a supermarket and a grocery store. Mr. Englehart said it was essentially a complete conversation; that Mr. Mitchell had advised him. He gave Mr. Mitchell time and requested a specific topic to be discussed for a specific property. They held that meeting. He left the meeting, went to the industry and solicited every retailer that does business based on the auspices of that meeting as a supermarket. He returned and then had to "eat his words."

Commissioner Soto asked to describe the differences between a grocery store and supermarket. Mr. Slaughter said the City defines a grocery store as being less than 20,000 square feet, and Mr. Mitchell has made a determination that a supermarket is one that is larger than 20,000 square feet and includes additional services and amenities such as pharmacies, prepared foods, or a photo center.

Commissioner Soto said it seems that the previous Lucky's tenant and Safeway across the street have abandoned those buildings around the issue of trying to expand their retail facilities to be one of these more inclusive supermarket types, and Mr. Slaughter agreed this is correct. Staff has seen a trend of many stores, including Safeway, of creating more lifestyle stores of 50,000 square feet or more. They are large in scope and have several impacts, but this would not be considered a big box and would still be between a supermarket and lifestyle store at 32,000 square feet.

Secretary Lee said he thinks a lot of confusion arose when Mr. Englehart initially spoke with Mr. Mitchell in terms of the definition because a grocery store is a permitted use, but it was deemed later to be a supermarket which Mr. Englehart was unaware of. What is difficult is that these are critical terms and not defined in the zoning code. He found that the City of San Ramon is dealing with a Wal-Mart application and they refer to these as "grocery stores." He suggested defining what is and is not a grocery store instead of arbitrarily stating it is 20,000 square feet or less.

Chair Duncan suggested giving staff a moment to look up the definition, and Mr. Slaughter stated that at times, they find that uses are undefined in the ordinance. The Director and staff look at other jurisdiction's definitions. An example was a car wash and they had to treat it as auto repair. Staff keeps a log with all interpretations in these types of situations, and he believes there is a grocery store definition.

Chair Duncan asked for an estimation of time for an Initial Study to be done. Ms. Velasco said given that it is an already developed site it would take approximately 8-12 weeks for a draft. Public review comment period would be a minimum of 20 days in addition to the 2-3 month period.

Mr. Slaughter said in the code, "food stores" and underneath it is listed "grocery stores" which is under Food and Beverage Retail Sales. It states, "Typically uses include groceries or delicatessens."

Mr. Englehart provided staff with a crime report, which Mr. Slaughter clarified, was contained in the Commission's packet. Chair Duncan asked for the first speaker in support of the project who would have 10 minutes to speak, and thereafter speakers would have 2 minutes to speak.

Public Comments:

Anne Hersu, El Cerrito, said she and her husband wrote a letter of support as Attachment 5 in the packet. They reviewed General Plan policies adopted in April and there is clear support, particularly in Chapter 11, which support access to fresh food and encouragement of grocery stores. This application helps to support those policies. Also noted is that the City has a soda tax proposed for the November ballot. Should the Commission approve the application, it would result in a location where this tax could be collected. She also said she would defer some of her comments until after the Initial Study is completed, but noted what seems to get lost in this discussion is that a permitted use could go into the site at any time. There is an approved design review for the building that passed the appeal period and an applicant could apply for a building permit and go through the plan check process. In reading Section 15.04.220.020; permitted uses for the C-2 District, a number of uses are permitted by right which she read into the record and said she prefers a grocery store over all of these uses.

George Staubus, Richmond, said he is baffled by the historical tone in the flyers he has received as some people expect some calamity if a supermarket returns to the location. He has shopped at the intersection since 1954 and many people want a supermarket back there. While he recognizes the feelings of competitors, citizens want to be able to purchase goods. Regarding Wal-Mart, their employment practices have been the most successful in America as measured by those who voted to work there and did not give weight to the emotional argument.

Serena Haapala, El Cerrito, said she has always used stores in her immediate neighborhood and has watched 3 major stores go out of business. She now shops in Berkeley which is a loss

to Richmond and feels strongly that a grocery store is needed in the area. She did not see how blight benefits San Pablo Avenue, and thinks it is important to bring life, business, tax base and service to the community back to El Cerrito and Richmond and is strongly in favor of having a Wal-Mart move into the neighborhood.

Commissioner Soto referred to the three markets closing, and asked for her analysis as to why this occurred and why the new store would be any different. Ms. Haapala said Central Foods was a privately owned market by elderly individuals who were successful but had to sell the market due to medical reasons. She was not sure why Lucky's Store closed and Safeway moved out because they wanted more business and to expand. She feels there will be enough business to provide for a successful grocery store and she thinks people will also travel to it to use it.

Rock Brown said he knew Tony Carrico and his thoughts are with him and his family. The process has been a long one but the process has been important because more and more people keep getting involved and learning along the way. He invited people to continue to be involved.

Chair Duncan reminded speakers that it is not the Commission's job to determine businesses but use. If the use happens to be a Wal-Mart, the Commission must be blind to that fact. He asked for the first public speaker who has 10 minutes to speak against the project.

Mitchell Evan, Richmond, said he lives about 3 blocks away from the proposed project and thanked neighbors for attending the meeting. He did not know Mr. Carrico personally but was sad he has passed before reaching resolution on the project and expressed his condolences to the family. He asked the Commission to deny this application because he believes a different project is possible today in this location. A different project would be good for the neighborhood, the City and the region, and the mystery supermarket application is not that project because of three points; 1) the mystery supermarket is not a good use for the Macdonald gateway; 2) there are good, realistic alternatives available today; and 3) it is within the Planning Commission's duty and ability to deny the application. Regarding parking, the applicant has shown they can be creative with available constraints. Unfortunately, they squeeze the absolute maximum number of parking spots out of the space, and a grocery store has been successful with the current spaces. Mr. Englehart has said the market requires a parking ratio of 4:1,000 in order to get the maximum financial benefit for his client. Conversely, many urban stores today successfully have tenants and operate well with less parking and more reliance on public transit and pedestrian-friendly amenities which is consistent with several City plans such as the San Pablo Avenue Specific Area Plan Healthy Corridors Project. He wants the tenant to have a successful business but not the kind of business that relies on maximum car traffic from all around the region to break even. Such businesses have cut-throat pricing, minimal margins, and pricing drives local businesses to close that would otherwise cause job growth, recirculating dollars into the local economy many more times than some of the national large chains. And, it appears there is nothing neighborhood oriented about the plan. He agrees that the term "supermarket" is not well defined and he supports that one of the goals of the project is to be mainly groceries, but this is also not defined. It permits on-line orders of general merchandise to be delivered by truck to this location. One retailer calls this site to store which is allowed by this plan, but people do not know what else is allowed by this plan because of lack of definition. It looks as though a lot of profit from the corporate headquarters can come out of this and not an operation that is a real benefit to the neighborhood or to the City. Finally, he learned that the definition of "grocery" in Richmond has different parking proportions to that of a "mall" which is recommended by staff. With all uncertainty, he questioned what would actually be approved. He also stated there are

good alternatives today but many neighbors are fearful that the site would remain empty for another 10 years which is not the reality. However, there were 3 potential tenants where the arithmetic did not work. The City of El Cerrito indicated they have sent multiple tenants over time and the fear there is no interest in the site is unfounded. In the collaboration meeting a couple of weeks ago, Mr. Englehart has indicated there are multiple tenants and they have tried to be creative to find a way to do mixed use. They are also willing and recommend the project be a permitted use which can be a grocery and something that meshes with the vision the City has invested in. Neighbors can be involved in locating potential tenants and reaching out and the idea of co-op grocery tenants has been mentioned, as well, and asked everyone to work towards a good use of the site consistent with those plans that the City has invested to the tune of \$120,000 in the Specific Area Plan and not throw that money away on a "blank check" on this project. He submitted some language by the deadline to be included in the packet. He did not know whether staff can require the applicant to return once they have a tenant prior to final approval of this project, but he requested this. If they cannot, he will ask that this project be denied. In conclusion, no one has a crystal ball, we cannot be certain what will happen in the future but the best way to predict the future is to design it. The Commission's decision will shape the future of the Macdonald gateway and he asked to exercise that power.

Commissioner Reyes asked what Mr. Evan thinks about the alcohol sales and the 24-hour operation of the supermarket. Mr. Evan suggested others from the neighborhood speak to this. Commissioner Reyes asked to clarify what Mr. Evan meant when he said the area is blighted and people are ready for anything to happen. Mr. Evan said one of the things he did in organizing the community and meeting with the developer is that he set up a website where people could post comments. He received a lot of comments that were hesitant mainly about their approach rather than the result. Everybody would indicate they want a grocery, and would almost make comments counter to their vote. They would indicate they would want it not to be a Wal-Mart, but they would also say, let's just take whatever comes. So, he looked closely at alternatives and something more specific.

Commissioner Reyes said Mr. Evan also mentioned something about local businesses and money generated will be leaving the City. He asked if the ownership and vendors should all be local. Mr. Evan said his personal interpretation is not that they are going to select a specific tenant to go in, rather that there are certain business practices and operations that are the worst. He said too little is known about this and it can be so many different uses and types of operation that they have to assume that since the applicant's stated strategy is simply go to the market and let the market decide, the result of that can be our last choice and we have to oppose this based on that likelihood of an outcome.

Commissioner Reyes said Mr. Evan also mentioned competition and competitive pricing and he suggested going on the Federal Trade Commission website and see who is on there in terms of violations of competitive pricing which might help the community determine which business they would like to locate there. Mr. Evan said his understanding is that it is not impossible for any two parties to voluntarily put their own constraints on who they want to do business with. If the owner or trustee of the estate chose to collaborate with them and put their own shaping of how they want to choose the tenant, he understands that Mr. Englehart cannot recommend that, but he is surprise he would "throw the baby out with the bathwater" in that they are still ready to have that conversation. Although the City cannot restrict that, the owner could and this is not illegal, and he is still open to this.

Commissioner Soto asked about comments made about four previous efforts that did not pencil out with the arithmetic. Mr. Evan said he did not think this was a matter of public record, and he

is actually relying on more of what has been repeated among neighborhood leaders that he has known over a number of years until this point. This property over the years has had repeated tenants which did not pencil out.

Charles T. Smith, Richmond, said he lives three blocks away from the site, extended his condolences to Mr. Carrico's family. When he moved to his home, at that time Mr. Carrico was a legend in the neighborhood and he remains a legend. He saw a short obituary on his life. He was a Portuguese immigrant, a veteran of WWII, a longshoreman, and obviously a very successful businessman and a Giants fan. Regarding this process, the last time he spoke before the Commission he complained about the fact that he thought this had been a stealth operation and he still thinks that. If there would have been some honesty about the mystery tenant, things might have changed but it did not happen this way. He takes offense by Mr. Englehart's comment about "justice for all." Wal-Mart is a corporation. He is assuming this is the mystery, but whoever it is, it is certainly a corporation. It is not a neighbor, a resident or a citizen regardless of who invites them into the community. The resident's needs should in his opinion override a corporation to change the character of their community. This is why he is here because as residents, they have this right and they are exercising them. He does not like it when someone from out of town comes in and starts waving the flag and talking about justice for all. He said he already understands this and this is why he is here.

Barb Foster said she has been a resident next to Macdonald and has shopped at the Safeway, Albertson's, and Lucky's stores for 35 years and she noticed there hasn't been much patronage at this Safeway Store. One after another came and then went, and as much as she would like to see the blight disappear and a different use or renovation of the buildings, she wants us to look at not having a food store. It seems like the City is wallowing in food stores. The huge Safeway mega-store is just a few blocks away. There is also Williams one block away. Giovanni's is not far away and she feels the neighborhood has enough grocery stores. She asked for something else like a hobby store, a community center, or some other use and she urged the Commission to oppose the project.

Christie Rigg, Richmond, said she also used to shop at the Lucky's market and it was virtually empty most of the time. She was unsure whether it was due to the quality of the merchandise or interest in the food market or that part of the neighborhood. Safeway had a much larger following and she was disappointed when they closed and moved. She takes issue with Wal-Mart as a tenant and she knows this is not within the Commission's purview, but if they are talking about nutritious food, Wal-Mart does not offer it. They import a lot of their food from China. She does not think their fresh produce is local, and according to the General Plan, this is an element of concern. She would like to see something that is more multi-cultural and this is not what Wal-Mart represents. She suggested going to the Hilltop Wal-Mart, stating it is not a good grocery store and she does not think a Wal-Mart would serve the neighborhood well, the working public, and those who need union jobs. Mr. Carrico would most likely agree with this, as he said he did not want Wal-Mart there and no one is paying attention to this.

Commissioner Reyes asked and confirmed that Ms. Rigg shops at Trader Joe's and Safeway. Commissioner Reyes said he thinks that many people in that area shop in Berkeley and Trader Joe's and Safeway in El Cerrito. Ms. Rigg noted that Safeway and Target are a few blocks away and she questioned why a market would open similar to these, as well as a big box store. She does not want to see televisions, cards, and electronics sold in her neighborhood, as grocery would be a small part of that big box store and it does not serve the purposes of the neighborhood at all.

Nancy Patton, Richmond, said she lives a few blocks away from the project site and has been thinking about this for some time. While it has not been stated it is Wal-Mart, she is opposed to this and would be concerned about parking in the area to support a big box store, which would be very difficult given the size of the parking lot. As previously stated, there is already a Target with food as a part of what it sells and she was not supportive of the store being a big box store such as Wal-Mart.

Commissioner Soto said he has heard many speakers address the fact that due to the closing of the supermarkets, there is a tendency to shop in Berkeley and El Cerrito, but he has not heard anyone talk about going north on San Pablo Avenue where there are a number of smaller independent markets that have fresh produce outside, as well as discounters such as Food-Max. This is right in the face of a major Lucky's store that closed down. He asked if Ms. Patton had any insight on this. Ms. Patton said she also shops at the El Cerrito Natural Grocery which is in Richmond and occasionally she shops at Target, but mostly she shops at Safeway Store.

Tony Sustak, Richmond, said he has written comments to submit to staff regarding the issue of granting a CUP for an anonymous tenant for alcohol sales. According to the ABC there is an undue concentration of legitimate businesses that already sell alcohol and there is no need for another one, particularly an anonymous one and one which does not serve the public's convenience or interest. Further, with regard to Mr. Englehart's comments, he owns property too but does not fetish it, does not make his living selling property and he has now found that we are hemmed in with limitations. Since this was an existing use, the project could go higher without violating the condition around the creek which came as a surprise to him.

Barbara Bennett, El Cerrito, said she lives three blocks away from the site and has been working with Sherry Angelini who worked with her on issues regarding traffic. She is unable to be present tonight and submitted her comments, as well as Ms. Angelini's. She said neighbors are very concerned about the traffic issues in the area. It is already congested because of I-80 and because of the shopping centers to the south. Ms. Angelini made it a point to go out and found that she sat in traffic 45 minutes trying to get between Barrett and Cutting Boulevard during rush hour. This market would make it worse. She knows from Mr. Englehart's statements that we are talking about a potential population being served of at least 15,000 to 20,000 people, which translates to about 5,000 more cars a day. The problem is there is no real traffic figures. The latest figures were from 2007 and only at the intersection of Bissell and San Pablo Avenue where there are 23,000 cars a day. There is a 2005 study showing 27,000 cars a day, but we do not know what 2012 says. This application states "Traffic in the area will not be affected because the subject site is accessible via walking, bus and local roadways" yet these very same roadways are the ones negatively impacted when there is a problem on the freeway and on San Pablo Avenue. Therefore, she asked that the Commission deny the application unless it can get a traffic study to ameliorate the problems such a project would create. She then submitted 84 more petitions in opposition to the project to add to the 100 submitted previously.

Nina Smith, Richmond, said she lives about 4 blocks from the project and said no one has really discussed the hours of operation. They were first told that it was going to be a 24-hour operation and when she looked at the paperwork, it still states this. Mr. Slaughter has informed some residents via email that the applicant has withdrawn the request for 24 hour operations; however, she has not seen this in writing, and his suggestion was that the community should comment on what they believe should be the hours of operation. No one has asked for that input yet and no one is giving it. She thinks this should have been asked earlier in the hearing by the Commission. She would like to see the store close by 10:00 p.m. and she has the same

concern about the other site across the street. She is very, very opposed to 24-hour operation. She has lived in the neighborhood when there was a 24-hour grocery store and it caused many problems. The community police officer at the neighborhood council expressed concerns over a 24-hour operation as well. Her other issue has to do with the process and the fact that rumors are out that people think it is a Wal-Mart but no one is saying what it is. The fact that there are so many people at this meeting is evidence of the fact that residents have not been dealt with in a forthright way. Having a CUP issued without the tenant identified is not the way to do business. It may be permissible and make more sense business-wise, but it is not good for an open community dialogue.

Chair Duncan noted that the Commission discussed the issue of hours at length at the last meeting and he thinks there was a lot of discussion about the fact it should not be 24 hours. In fact, the Commission made the recommendation that it be similar to Safeway's hours of 6:00 a.m. to 10:00 p.m. and this would probably become a condition of an approval.

Ms. Smith noted that Mr. Slaughter's email just the other day stated specific input on what hours residents want should be given at this hearing.

Commissioner Soto said Ms. Smith mentioned 10:00 p.m. and asked if there was any consensus amongst neighbors one way or the other. Ms. Smith said she does not know that and thinks it is a good question to ask. She attended one neighborhood meeting and not one of the others and was not that involved. She does not want to see a store opened until 1:00 or 2:00 a.m. and certainly not 24 hours.

Commissioner Soto asked for her opinion about selling distilled spirits versus wine and beer. Ms. Smith said she has concerns regarding the issuance of an alcohol permit to an unidentified tenant regardless and she would weigh in when she knew who the tenant is.

Linda Moran, Richmond, expressed thanks to the Planning Commission and condolences to the Carrico family, and said she submitted a letter in advance that included statistics that the Richmond City Police Department was able to give her for a 1,000 foot radius from the intersection of San Pablo and Macdonald Avenue, which is called Macdonald Gateway in the San Pablo Area Specific Plan and in the 2030 General Plan. She commended the City for its forward-thinking views and plans to implement a 2030 General Plan. The vision is not that far away in thinking of the number of years it takes, and it was on point on so many areas, not just on healthy foods and sustainability but in economic development and social justice issues. On the point of economic development, this particular application on Goal Number 5 does not meet that standard specified in a number of places in the plan, and specifically the San Pablo Area Specific Plan. She has reviewed the most recent submittal of architectural drawings, and while she is not an architect, while people have been told there is no specific applicant, it is an interesting mix of having specific paint color of a specific corporate brand. In her letter, she states how an unnamed tenant is unprecedented and unwarranted for a City that has such forward thinking plans in place, and she hopes the Commission can carry those plans out.

Commissioner Soto thanked Ms. Moran if she was the person who provided the crime information, which he said is pertinent to his previous question regarding the Chamber of Commerce's claim this is a magnet for crime. From what he sees, it actually mirrors that of the crime statistics in general that things have been going down for at least the last 3 years. He was not sure why this is.

Ms. Moran asked the crime analysis unit for some insight as to whether there were additional patrols and they were no able to identify specifically what might be happening at that intersection. She said granted this is 1,000 feet which is not a lot of space and it also does not include El Cerrito which is at the backend of that property. However, it is true that at about a peak of about 214 incidents in 2009, it has gone steadily down and she thinks this can be attributed to the fact that an open field is less likely to have crime than a real business. So she is not sure there is a correlation of the fact that there is a business there or crime is really going down.

Commissioner Soto said in looking at the statistics by type of crime, it appears that there are primarily property crimes, a concentration of burglaries, auto theft, and theft which is probably related to the volume of vehicles and people there. Ms. Moran added that forgeries have also gone down, and Commissioner Soto said since there is no longer a store there, forgery can no longer occur. She said traffic crimes and car thefts, however, have not decreased. She was hoping for 1,000 feet and one quarter mile radius, but she was not able to obtain that data although she thanked the police department's quick response to her request.

Commissioner Soto asked staff if this type of analysis would be included in an Initial Study. Mr. Slaughter said an Initial Study does not cover crime. It analyzes things like noise, air quality, traffic, and cultural resources. Commissioner Soto said if the Commission wished to have this type of data included, is this something that could be requested of the police department, and Mr. Slaughter said yes; he could supply this information in the future and if it allows him to include one quarter mile statistics, he will also provide this.

Chair Duncan noted the comment regarding colors is a moving target. The colors were placeholders. The last submission was green because it reminded one of vegetables and grocery, so he would not read too much into it. Ms. Moran said colors have changed and they are more of a rust color, but Chair Duncan said at this point color has no meaning. It is rather a design feature that is meant to tell the Commission where there is contrast. He said the green color, which was changed to the rust, had initially touched a nerve with one of the DRB members.

Vahid Fozdar, Richmond, said he works at John F. Kennedy High School and his family has been in Richmond since the late 1940's and he distributed an informational packet along with a couple of letters, one of which he submitted on June 15, 2012 regarding alcohol sales and community health. Regarding the Type 21 off sales license request, a host of studies shows the close connection between alcohol availability in a given area and also increased violence, assaults and traffic accidents. Richmond has the most number of liquor stores in Contra Costa County and the question is whether it needs any more. Regarding the staff report, for Census Tract 3700 where this site is, it is incorrect. There is another site with a Type 21 which is the one on Macdonald which used to be the Safeway, which has not yet expired. Safeway will probably renew it to avoid competition with its new store. There is a Type 20 license at Stop N Shop at McBride and San Pablo that allows for wine and beer and there are innumerable site licenses there and in the adjacent census tracts. Therefore, he asked that this point be revisited by the Planning Commission. Page 7 of the staff report states that this store is designed to "capture the maximum portion of the local regional market" which is not a normal supermarket or grocery store but the "600 pound gorilla" and the Commission might want to consider this.

Patricia Jones, El Cerrito, said she is speaking as a neighbor who lives adjacent to this project and respectfully asked that the Commission oppose the project. It is too large a project, so close to residential areas, and will generate too much traffic in an area adjacent to the bike trail and

Baxter Creek Park. She bikes to work many days through the area and does not see the point of having a 24-hour big box development with alcohol sales in a residential area. It does not seem conducive to supporting other small businesses within Richmond. From the conversation this evening, she is very baffled as to why the Commission is discussing a grocery store when it is truly a big box.

Chair Duncan said this distinction has been made tonight. In fact, grocery has been defined as something smaller in scale with more limited scope, and a supermarket is something different. The project before the Commission is a request for a supermarket, the larger one. So, people are using the words interchangeably when, in fact, it is not the case. Ms. Jones said when she looks at a Wal-Mart she sees some groceries and supermarket and a lot of other "stuff." Chair Duncan reminded Ms. Jones that the Commission is not talking specifically about Wal-Mart but a supermarket use. Ms. Jones said she; however, is able to talk about it.

Commissioner Reyes asked Ms. Jones where she buys her groceries, and Ms. Jones said she buys groceries at a number of places. She used to buy them at the small Safeway which was the greatest corner market. She does not use the big box Safeway so much because it is difficult to get to, and she works above a Trader Joe's in El Cerrito so she shops often there because of it. She also at times shops at Target and also to the small market up the hill from her.

Commissioner Reyes asked Ms. Jones would she rather spend her money in Richmond, and Ms. Jones said she actually lives in El Cerrito but she does a lot of work and spends a lot of time in Richmond, but would like to see money stay here.

Rose Wong said she is glad the City has decided to do an Initial Study because the CEQA exemption was inapplicable to the situation; however, before she came to this meeting she reviewed the staff report and attachments which the Commission is going to base its decision on. After she reviewed it, she does not think there is enough information in the packet to make an informed decision. What is the most glaring thing missing, which the Commission disagrees with, is the identity of the tenant. This is a critical factor in determining the impact it will have on the community. Different tenants will have different impacts. Before the Commission votes on this and she knows the vote has been put off, the Commission needs to know who the tenant is. The Initial Study should identify this and make its assessment based on this. She asked why the identity is being kept a secret. Once this is known, the Commission will be able to know the impact. She questioned the amount of revenue the City will get from whatever tenant will be in the space, and said there is nothing in the written record that has any kind of financial analysis nor is there anything about how much the City is going to pay in terms of extra police services, sewer services, traffic impacts, or how many more diesel trucks will be delivering goods.

Commissioner Soto clarified that also part of the Commission's consideration is comment from the public, its perspective from the neighborhood considerations and the community's knowledge, and it is not strictly based on the staff report and this is the reason for these public hearings. Ms. Wong said she is glad the Commission wants to obtain public opinion because there is nothing contained in what the Commission has received that talks about crime, traffic, or cumulative impacts and Commissioner Soto said some of this will be done with the Initial Study. For the consideration of all those who shop at Trader Joe's, one reason he does not shop there is because almost everything is packaged in plastic, which he considers convenient and ends up in the middle of an ocean. Ms. Wong hoped that the identity of the tenant will be considered in the Initial Study.

Gina Swirsding, Richmond Heights Neighborhood Council resident, said she does all the crime statistics for the area and gets them from Michelle Oriago and she can tell the Commission everything about the area. The reason why Safeway left was because they were in the red. She has dealt with Safeway a lot on the issues around the crime in the area. Every time she does the crime statistics for the Richmond Heights area, there was constant petty theft, fraud, and Safeway never made any money at that site. They kept the store open for the public and when the El Cerrito store started losing money, they consolidated and went to the Target site. She has talked with management at Whole Foods, Trader Joe's, and Berkeley Bowl and they will not come into Richmond, so people may as well rule all these out. What bothers her is that all of her neighbors are at the meeting, they have a market that sells alcohol and cigarettes to minors, yet the neighbors in Richmond Heights do not seem concerned about it. There have been two major shootings, and they got their alcohol license renewed, which disturbs her. What she wants for the site is a stable company on the site, which is an eyesore that will remain there. The crime in the area is high. There are many assaults, she has gone to criminal meetings and much of the crime has to do with empty buildings and an open field.

Naomi Williams, West County Alcohol Policy Working Group, said she has agreed with other speakers regarding alcohol sales and said there should be no empty store given privileges to have a license to sell liquor in any City without knowing the tenant. She thinks the design of the store is not her concern, but what is inside the store which is alcohol since she represents the alcohol policy working group. While she is not against alcohol, a Type 20 would be better than a Type 21 at that location since it will be a supermarket. She noted there are too many places around to get liquor. She asked the Commission to deny any liquor coming in unless there is an identified tenant she can work with.

Commissioner Reyes said he knows Ms. Williams does a lot of work with businesses that obtain licenses, and he asked what has been the practice of other locations selling alcohol. Ms. Williams said one of the largest corporations from Richmond was Target and they found time to come to the Alcohol Policy Working Group in order to see if it was okay to operate in the proposed location, which was named first. Commissioner Reyes asked if this is a practice of courtesy or requested of Target. Ms. Williams said usually the Planning Department recommends they come to the group, and it is not mandatory but up to the operator/owner.

Commissioner Soto said at the last hearing, there were a number of definitions included defining alcohol products. He knows they were specifically trying to restrict malt liquors and fortified wines, which are used by the alcohol industry to target African American, Latino and other low income communities with their product and problems that ensue. But, at the same time, it did not seem to take into consideration, and she mentioned some of those products and the wine was at 13.5% or 14% when in fact there are red and white table wines that have higher alcohol content than that. It also identified things like screw caps as opposed to corks, and in fact the wine industry is moving to this because they are more efficient in keeping out oxygen than the traditional corks. Then, there is the issue of Belgian ales which are higher alcohol content than some of the malt liquors, but they do not market them to the ghetto, but to higher income communities. He asked if the Alcohol Policy Working Group has taken into consideration any of these products or modifying some of the definitions to accommodate those types of products. Ms. Williams said no they have not. The only thing they have said is if they are manufactured in packages of 6 or 4 that they not be broken apart to sell one out of the package.

Chair Duncan said Ms. Williams mentioned that a Type 20 would be more appropriate. For the sake of those present, he asked to make a distinction between a Type 20 and Type 21. Ms. Williams said Type 20 is just beer and wine. Type 21 includes spirits.

Christine Hayes, Richmond Heights, said she is happy to see neighbors at the meeting, said she took a walk down memory lane to look at the development at the development between Pt. Richmond, Macdonald and San Pablo Avenue. Macdonald looks beautiful but not so much San Pablo Avenue. She would like to be able to walk from Pt. Richmond where she has worked at three mom and pop grocery stores and she is concerned about Richmond being a city of pride and purpose. She is a proud resident since her parents arrived in 1973. She wants to be able to ride her bike or walk along Macdonald and San Pablo Avenue, do her shopping, and said she lives on the front lines of businesses along San Pablo Avenue on the corner of McLaughlin and Esmond Avenue, and experiences all the crime and craziness associated with it. She cares about her neighbors, walking out her front door, and representing who she is. In looking at businesses, grocery stores are great and she can walk and go to local businesses. She said part of what she submitted did not get included in the supplement for the neighbors and also wanted to cover subtenant suggestions.

Commissioner Reyes confirmed that the Commission has it, but Ms. Hayes said in the “wants” section, the one she did not include is “surveillance cameras linked to RPD for both sites at that location.”

Rebuttal – Applicant

Mr. Englehart thanked the Commission for the opportunity to hear the community and specifically their concerns. He is not at the meeting on behalf of a specific tenant but Mr. Carrico, and he would just ask that the Planning Commission consider the input from citizens, consider what he has done and where they have come. Relating to alcohol, he is not here on behalf of a tenant, but he is more than happy if the Commission would like to check the alcohol provisions when an identified tenant is here. He recognized concerns about hours of operation and said he will work with the Commission when they finalize agreements, stating they gave up 24-hour operation and said he simply wants to be able to market packages to the industry. Regarding specific concerns about the disdain of the specific tenant, he cannot represent what will happen but he will say there will not be anyone to force citizens to shop at the store. There will not be any efforts made to hijack the store into the property, there will not be barkers on the sidelines forcing retail consumers, and all he asks is that the Commission has the request before them and they would like to do a supermarket. If the Planning Commission is not comfortable with a supermarket, it is okay with them if it is denied. All they are asking is how the Commission would want them to prepare and develop the site. Whatever the City of Richmond needs to make them comfortable in the decision relative to the property, the estate of Mr. Carrico will work with them. They will either process a supermarket now, later after an Initial Study, or they will move right to a permitted use. They do not want a contentious project and people going by the property aggravated at Mr. Carrico. They want to simply put the highest and best use into the property such that the family can make a fair return on their property rights and investment to capital. If the Commission would like a supermarket, he asked that they respect the findings necessary. If it wants them to go to a different use, he asked them to provide that direction, as well and he will work with them.

Commissioner Teltschick-Fall, to avoid the contentious situation, asked Mr. Englehart if he would be willing to reveal the tenant to the Planning Commission and the neighborhood even though it is not required. Mr. Englehart said the biggest reason they have not done that is for competitive purposes. When they were before the Commission the first time, they had not reached an agreement with the tenant. They have now solidified and identified a tenant and are working with that tenant but do not have an enforceable deal. But, for competitive purposes, it is

not his position to reveal tenants no more than Safeway revealed what they were doing on the Target deal or Target revealed when they were acquiring Montgomery Wards. He said he can understand the concern of the neighborhoods, but this is a commercial real estate situation and the industry, retail specifically, is a very competitive industry. For him to be identifying the tenants and their competitive and real estate strategies is not fair to them. He represents Mr. Carrico and has a negotiated deal with a tenant that Mr. Carrico was comfortable with. He is comfortable with it as a conditional use tenant and they have yet a second tenant that they have reached tentative agreement on as a permitted use, but it is not within his purview.

Chair Duncan said at the outset, Mr. Englehart spoke about Mr. Carrico's death and the fact that the trustees are now in charge, which is a change. He asked him to characterize this change. Mr. Englehart said heretofore his communications were with Mr. Carrico. They argued and fought with the DRB regarding cost and issues of his concern. He had to take this information from the DRB back to Mr. Carrico, had to either get approval or denial, and to get agreement to spend the additional money. Mr. Carrico has an extensive estate with real estate and extensive stock holdings, has made substantial charitable contributions on his death, and this real estate is just a small project in a very large estate. So, the trustee of the survivor's estate must deal with not only winding up the estate but distributing the assets according to the provisions of Mr. Carrico's instructions. This has taken his interface with a 92 year old who trusted him and who he has let down in this process. Now, the person he is dealing with also trusts him, but he is simply one of several items to deal with. Today he spoke with the trustee and he asked him whether he would be able to maintain momentum on the deal. Staff has now indicated that the continuance could be up to 12 weeks, and the momentum they had was commanding a decision of the tenant. He assured the Commission that if timely decisions are not made, on Saturday morning, National Fence Company will be on the property to fully enclose the site with an 8 foot cyclone fence based on the police and code enforcement department's recommendation to avoid continued liability and dumping. Based upon how the Commission decides tonight, he will take and honor the findings and input from the citizens and they will make the next decision, but he asked them not to be surprised if the next decision involves a \$4 million renovation of this building for a permitted use to get the building functional. Richmond is devoid of grocery stores and this is his business, but if the decision is for denial, then he will advise the trustee and act accordingly.

Secretary Lee commented that he thinks it was beneficial to bring the Commission and audience up to date. He has also been in many negotiations and situations where a decision must be made to address an obstacle. While he understands that the tenant cannot be identified because of competition, but without revealing anything, he could make a statement that it is not Wal-Mart, and he asked Mr. Englehart to think about this. Mr. Englehart said given the collaboration committee process and his work to date with the City, he asked if there were financial inducements available to the family to not make a Wal-Mart deal. Secretary Lee said he thinks that this would not compromise the deal competitively, and Mr. Englehart said he would be willing to recommend this to the trustee if the City can get the same amount of money from not doing a deal with Wal-Mart as they can by doing a deal with Wal-Mart and the City would help bridge that financial gap he would do this, as well as alternatively bridge the profits.

Chair Duncan asked for Mr. Evan's rebuttal.

Rebuttal – Public

Mitchell Evan said he thinks much of the frustration he senses could have been avoided had this been more open from the beginning. He now hears there are opportunities to work on a

shared solution. One solution put on the table was that there is already a permitted use they could put on the site and the City and neighbors should be looking at that. In following up on comments by opponents, he is curious as to why potential tenants would not want to come. He heard comments on the applicant working with them on alcohol and the operating hours, and he has not received an answer as to why these things are not in writing. Lastly, he circled the fact that Secretary Lee asked a great question which would be interesting to hear; that it is not Wal-Mart and was available for questions of the Commission.

Chair Duncan asked for staff summation.

Mr. Slaughter said he wanted to clarify a couple of things for the benefit of the audience, stating when staff speaks about conditional uses and permitted uses, there are a list of permitted uses that would be allowed to obtain a business license immediately and these uses include auto supply stores, building material stores, hardware stores, general merchandise like a Big Lot or K-Mart, day care centers, government facilities, recovery facilities and religious assembly. Conditional uses are those before the Commission this evening which require additional attention and these are also listed in the City's ordinance. He also clarified that if the Commission were to grant the CUP, it would not provide any liquor license but simply the opportunity to apply for a license with ABC which would then make public who the tenant is. Lastly, the San Pablo Specific Plan has not yet been adopted nor has the Livable Corridors Plan, but staff pays attention to the draft goals and policies in these documents. Lastly, staff still recommends approval of the project with the City Attorney's recommendation to do additional environmental analysis.

Secretary Lee clarified that there are some permitted uses and not all are negative, and a grocery store is a permitted use. Mr. Slaughter said if a grocer wanted to occupy 19,999 square feet and do some sort of partition in the building, they could pull a business license or building permit and have this approved.

Vice Chair Lane said there were many terms stated like "big box, supermarket, and grocery store" and she asked staff to define the differences between a supermarket and a grocery store. Mr. Slaughter said it is mainly the size, but there can be some overlap in the goods they provide, but what the City has determined is that 20,000 square feet or less is a grocery store. A store that sells similar goods but additional services in 20,000 square feet or more, and staff does not consider this a big box project which is typically 50,000 square feet or larger.

Commissioner Choi said he was not familiar with a certain store's policies, but asked if this means televisions and melons could both be sold under a supermarket scenario. Mr. Slaughter said a supermarket has a wide range of types of goods and services, and staff does not have a defined list of what is not permitted to be sold or in what ratios. Therefore, they would be permitted to sell a wide range of goods.

Vice Chair Lane asked and confirmed that the Target Store is classified as "general merchandise" and not a grocery store or supermarket, which is an ancillary portion of their sales.

Secretary Lee said given the significance and magnitude of a grocery store versus a supermarket, possibly in the interim, the Commission might want to put more effort into a succinct or broader definition of these two terms which may encompass a grocery store that is slightly larger, and he felt the 20,000 square feet is very arbitrary. Mr. Slaughter said staff researched other jurisdictions, looked at other definitions and it was not arbitrary. They have it

listed that conditional uses are supermarkets. Secretary Lee disagreed, given the square footage and said the City has more effort put into the definition of a mobile vendor than a supermarket. Mr. Slaughter said staff looks forward to updating its zoning ordinance and providing additional definitions to clear up any questions.

Commissioner Teltschick-Fall said in listening to comments, it seems to her that concerns revolve around the business model. So she still thinks that transparency about the actual tenant would be a very sound business practice and would alleviate much of what they have been through. But, given the fact that the applicant does not want to reveal the tenant, she asked whether it was still within the realm of what their job is on the Commission to get more information on the business model and the quality of the business, parking, the effect on the neighborhood, on the economy, and on the quality of the experience. Mr. Slaughter said in his experience he has never highlighted the business model of any potential tenant or applicant which is outside staff's purview. Staff is charged with making the findings and if findings can be met, staff recommends approval by the Commission and if findings cannot be made, staff recommends denial. The Commission and the public are welcomed to ask these questions but judging the project on the basis of a supermarket with the many conditions, he feels comfortable that the conditions approval will shape whoever would go into the space.

Commissioner Teltschick-Fall said if all supermarkets were created equal this would work, but it is obvious they are not. Mr. Slaughter said this is an opinion and people may have different opinions, but he does not have information on the business model or tenant but the City can condition projects no matter who the tenant is to function how the City wants them to function, but as far as what makes a successful supermarket and what does not, the market determines this.

Chair Duncan said from a planning point of view, a way to address this might be to do a finer grain definition of what the different types of stores are, similar to what Santa Rosa has done. If staff is making a distinction between an ethnic food store and only vegetarian store, this by default defines the business model. The City unfortunately does not have this and this is what the Commission has to work with. Mr. Slaughter added that it is not unprecedented that the City permit commercial space without knowing who the tenant is, and he provided examples of Planned Parenthood locating in a tenant space as well as the BART parking garage tenant spaces.

Chair Duncan said he thinks it is also important to remember that every decision the Commission makes on applications is blind to the applicant's business. The Commission deals with uses. It happens that 99% of applications are presented with their business names and logos, but when the Commission makes its decision on the business' merits, they are not approving a brand but a use. Another way of thinking about it is a housing development, and not knowing who the tenants are. He feels that as the project progresses, it can be conditioned in a very narrow way to meet larger concerns, but they have not defined these conditions because they are not there yet.

Commissioner Soto asked about implications if the Commission closes the hearing and returns after staff has prepared the Initial Study. Chair Duncan noted that the Commission should leave open the public hearing and set a date certain for the Initial Study to return.

Commissioner Reyes said once the Initial Study is underway, he asked if the Commission can receive information on the tenant. Mr. Privat said the applicant is not required to provide the

name of the tenant, but they may choose to, or they may have one at the time the Initial Study is complete.

Commissioner Reyes clarified that a 19,999 square foot grocery store could be a permitted use, and if this was proposed, he asked if there could be space for other types of businesses that could locate in the left over space. Mr. Slaughter said approximately 12,000 square feet could be used as a subdivided space and another use could move in, depending on whether it is permitted or conditional. He added that if a permitted use wanted to locate there and sell alcohol, they would have to seek approval of a CUP by the Commission.

Commissioner Soto confirmed that the additional 12,000 square feet does not include the Hacienda Restaurant, and Mr. Slaughter added that this is slated for demolition.

Chair Duncan said he concurs with the City Attorney's office that if an Initial Study is warranted, it will provide a lot of information. It will push the project out as much as three months, and pending additional discussion, he entertained a motion to keep the public hearing open, set the next hearing to a date uncertain and direct staff to prepare an Initial Study.

ACTION: It was M/S (Soto/Reyes) to keep the public hearing open, set the next hearing to a date uncertain, and direct staff to prepare an Initial Study; unanimously carried.

COMMISSION BUSINESS

- 3. Consider the following: 1) vote to suspend Section 6.2 of the Procedural Rules of the Commission providing for the election of officers at the regular meeting of the Commission in July of each year, 2) vote to hold the election of officers on June 21, 2012, and 3) hold election of officers.**

Chair Duncan stated the situation is unusual because he will not stay on the Planning Commission and his term is up at the end of June, which leaves the Commission without a Chairman for the July meeting. He said the City's ordinance states that the election must be in July which means it must be done now. However, Mr. Privat has proposed another way to suspend elections. The Commission is being asked to suspend Section 6.2; the Procedural Rules of the Commission providing for the election of officers at the regular meeting of the Commission in July of each year. The Commission will then vote to hold the election on June 21, 2012, and then hold the election.

ACTION: It was M/S (Soto/Teltschick-Fall) to suspend Section 6.2 of the Procedural Rules of the Commission providing for the election of officers at the regular meeting of the Commission in July of each year; unanimously carried.

ACTION: It was M/S (Soto/Choi) to hold the election of officers on June 21, 2012; unanimously carried.

Chair Duncan noted that he and Secretary Lee will be leaving the Commission and three new officers will be needed; a Secretary, Vice Chair and Chair. He noted the Nominating Committee has selected candidates.

Commissioner Choi said the committee has nominated Commissioner Reyes as Secretary. There were no other nominations.

ACTION: It was M/S (Choi/Lee) to elect Commissioner Reyes as Secretary; unanimously carried.

Commissioner Choi stated the committee has nominated Commissioner Soto as Vice Chair. There were no other nominations.

ACTION: It was M/S (Choi/Lee) to elect Commissioner Soto as Vice Chair; unanimously carried.

Commissioner Choi said the committee has nominated Commissioner Lane as Chair. There were no other nominations.

ACTION: It was M/S (Choi/Lee) to elect Commissioner Lane as Chair; unanimously carried.

4. Reports of Officers, Commissioners and Staff

Ms. Velasco said staff will hold its first Housing Element Update Community Meeting next Thursday, June 28, 2012 in the Council Chambers from 6:00 to 8:00 p.m. The public and Commissioners are invited to participate in that meeting. Staff has set up a link on its website under its "current projects" page to the Housing Element Update.

Ms. Velasco also presented plaques to Chair Duncan in recognition of his 4 years of distinguished service and Commission Lee for his 6 years of distinguished service to the Richmond community and City.

Mr. Privat thanked Chair Duncan and Commissioner Lee for their service and said they will be greatly missed.

Commissioner Reyes said he recognized Mr. Englehart's frustration with the situation and Mr. Carrico's passing and he voiced appreciation and recognition of long-term business owners in the City.

Commissioner Soto voiced his appreciation to outgoing Chair Duncan and Commissioner Lee and recognized the judicious manner in which the Commission has operated. He stated this Saturday, June 23, 2012 is the Annual Richmond Pow Wow which will take place at the City.

Commissioner Teltschick-Fall thanked Chair Duncan and Commissioner Lee for their service for bringing civility and humor to the Commission, congratulated new officers, and observed that she traveled to Sidney and Perth, Australia, as well as Aspen and she noticed their planning techniques and architecture which mixed well with their environments. She was encouraged by this and said the Commission will continue to improve the aesthetic nature of Richmond which has an impact on the human experience, as well as its economy. She mentioned that in Australia there are solar panels everywhere, their incentive programs are working, and they were also recycling their grey water, policies of which she hoped could be implemented for Richmond.

Chair-Elect Lane thanked Chair Duncan and Secretary Lee for their service on the Commission, said she is happy to step into the Chair's position and echoed Commissioner Soto's comments in that they have brought skill and wisdom to the proceedings.

Commissioner Choi thanked Chair Duncan and Secretary Lee for their service, said he will miss them both and wished them the best of luck.

Secretary Lee thanked the Commission for their kind words, said it has been an honor to serve, and it has been a great learning experience which will serve him well in his future. He thanked Chair Duncan for his tremendous job as Chair.

Chair Duncan thanked staff for their outstanding work especially when under duress and said their support has made serving on the Commission a pleasure. He wished the Commission well and he presented newly elected Chair with the gavel to adjourn the meeting.

Adjournment - The meeting was adjourned at 9:45 p.m.