

PLANNING COMMISSION MEETING
COUNCIL CHAMBERS, RICHMOND CITY HALL
1401 Marina Way South, Richmond, CA
April 5, 2007
7:00 p.m.

COMMISSION MEMBERS

Virginia Finlay, Chair
Vacant, Secretary
Nagaraja Rao
Jeff Lee
Vacant

Vice Chair Stephen A. Williams
Zachary Harris
Vicki L. Winston
Vacant

The meeting was called to order by **Chair Finlay** at 7:00 p.m.

Commissioner Harris led in the Pledge of Allegiance.

ROLL CALL

Present: Chair Finlay, Vice Chair Williams and Commissioners, Harris, Lee, Rao and Winston

Absent: None

INTRODUCTIONS

Staff Present: Jonelyn Whales, Associate Planner; Janet Harbin, Principal Planner; Carlos Privat, Assistant City Attorney; Richard Mitchell, Planning and Building Director, Steve Duran, Community Redevelopment and Economic Development Director; Allen Wolken, Redevelopment Agency Director; Hector Rojas, Assistant Planner, and Lina Velasco, Associate Planner; and Lamont Thompson, Senior Planner

MINUTES - None

Chair Finlay provided an overview of the Consent Calendar, meeting procedures for speaker registration and public hearing functions and procedures. She noted that items approved may be appealed in writing to the City Clerk by Monday, April 16, 2007 by 5:00 p.m. and announced the appeal process after each item.

CONSENT CALENDAR

Chair Finlay noted the Consent Calendar currently consisted of Items 2, 4, 5, 6 and 7.

Janet Harbin referred to Item 2, Civic Center renovation and noted staff had several changes to modify the conditions of approval as discussed at the Development Review Committee meeting on Monday night.

She noted changes were made to Conditions 11, 20, 22, 27, 28, 36, 39, 40, and 45.

Staff added the words, "automatic irrigation system" on the maintenance part of condition 11.

On Condition 20, staff asks that the reference to the brick wall be deleted and add that "materials, colors and details that are compatible with the existing main buildings to be placed around the equipment for screening."

On Condition 22, staff removed the first line from "a complete horticultural study through, will it be too large for that location." The condition now reads, "The landscaping plan, including all of its components shall be subject to review and written approval by the Parks and Landscaping Superintendent or designee prior to the issuance of a building permit."

On Condition 27, staff removed the line that states, "...generally shall set an example to the development community and to the public of current..." which has to do with mitigations the applicant must go through. They added that it was to meet standards regarding the storm water management plan.

On Condition 28, they removed the last phrase, "light grey combined with dark accent pavers to create patterns" so that there would be less of a concern related to color and type of paver. Staff noted that the narrow modular concrete paver is to be used.

On Condition 36, staff deleted the whole condition which related to the primary access to the Civic Center and Plaza.

On Condition 39, staff deleted the whole condition as it had to do with irrigation measures in the approved negative declaration and it was felt it was unnecessary.

On Condition 40, they deleted the whole condition as it had to do with east and west side spaces in the plaza, the double layer of trees, and some additional room areas out in the plaza area.

On Condition 45, they deleted the first line of the condition. It now read, "The design of the north side doors shall be submitted to staff for review and approval by the Planning Commissioners or their designee prior to the issuance of a building permit."

Commissioner Harris noted the only addition he had was that under condition 45, the DRC discussed the doors on the north side being framed as opposed to being frameless doors as originally mentioned in the condition. He thought it was the case that the first sentence of the revised condition would have read, "the design of the north side doors shall be framed and submitted to staff for review and approval...."

Commissioner Lee said the conditions are the same as what he recalled.

Commissioner Winston assumed the item would be removed from the Consent Calendar, said she could not attend the Monday meeting and during her review of the packet, felt there were items that the DRB wanted to be included that some had not yet received agreement from DRB members. She confirmed that only applicant, staff and two Planning Commissioners were present at the DRC meeting, and they discussed the item and had reached agreement.

Commissioner Winston said she had seen amendments being made to conditions, but had never seen the removal of conditions and she requested removal of Item 2 from the Consent Calendar.

Chair Finlay noted a request had also been received to remove Item 4 from the Consent Calendar.

Ms. Harbin said there had been a revision in the text of the conditions in Item 6, stating there is a change in the CUP for an eating and drinking establishment under existing commercial tenant space, noting there was a typographical error in Condition 10 and should read, "Prohibited Activities-There shall be no ~~bar or~~ electronic or coin operated amusement devices at the subject site." She noted the words "bar or" were being removed.

Commissioner Harris reported that the DRC also covered Item 7 and he said there was lack of consensus of Commissioners present as well as the belief of incomplete analysis, and therefore, they could not make a recommendation on the item.

Chair Finlay requested removal of Item 7 from the Consent Calendar.

Chair Finlay said the updated Consent Calendar now consisted of Items 5 and 6, and removed from the Consent Calendar were Items 2, 4 and 7.

ACTION: It was M/S (Harris/Rao) to approve the Consent Calendar as amended, consisting of Items 5 and 6 and noting changes recommended by staff on Condition 10 for Item 6. Vote: 6-0.

Items Approved:

5. **CU 1103772 – Mobile Vendor at 710 23rd Street** - PUBLIC HEARING to consider renewing a temporary Conditional Use Permit for a fast-food mobile vendor at 710 23rd Street (APN: 528-360-028). C-2, General Commercial Zoning District. Nancy Lu, owner; Joaquin Rodriguez, applicant. Tentative Recommendation: Conditional Approval.
6. **CU 1103785 – Operate a Restaurant with a On-Sale Beer and Wine License at 2200 Hilltop Mall Road** - PUBLIC HEARING to consider granting a Conditional Use Permit to operate a restaurant with a on-sale beer, wine, and distilled spirits license at 2200 Hilltop Mall Road, Suite 207-B (APN 405-320-015) – C-3 Regional Commercial Zoning District. The Mills Corporation, owner; SMDM Properties Inc., applicant. Tentative Recommendation: Conditional Approval.

Brown Act – There were no public speakers.

Items Discussed:

1. **TM 1102938 – Condominiums Conversion at 4140 Fran Way** - PUBLIC HEARING to consider a proposal to permit the conversion of 12 existing rental units to condominiums through a Tentative Subdivision Map, per Richmond Subdivision Ordinance Section 15.08.635, and a parking variance, at 4140 Fran Way (APN 425-262-001). General Plan Designation: High Density Residential 944 and General Commercial 922, Zoning Designation: MFR-3, Multi-family Residential District, and C-2, General Commercial District. Tze Keung Wong, owner; Angela Villar, Luk and Associates, applicant. Tentative Recommendation: Conditional Approval.

David Barbary, Associate Planner gave the staff report, stating a copy of DRC comments were distributed to the Planning Commission and noted that sewer capacity was not an issue after discussing it with wastewater representatives. He said the proposal was modified and a memo from the applicant was attached indicating that they would prefer to use a City water meter for the conversion. The other items included a four-month old pest control report, and revised final condition which has been revised to address Title 24.

Mr. Barbary noted that at the time the project was built in 1976, only 12 parking spaces were required at that time. He said applicants were required to look at a parking variance because of bedroom counts and the request was currently a reduction from 19 spaces to 15 spaces. The project combines the General Commercial District and High Density Residential and conditions are permitted in both those district.

Commissioner Winston referred to the second bedroom, asked for its dimensions and whether or not it had a closet. **Mr. Barbary** said it was small but did meet the minimum dimensions as required by building code, and **Chair Finlay** announced that the second bedroom was 9.5 x 12.4 feet.

John Lee, Project Architect, briefly described the two story building over parking, said the conversion keeps the building the same, there were significant items of replacement and said he was available for questions.

Commissioner Harris questioned heating and air conditioning requirements for the project, and Mr. Woo said they would be individual electrical wall heaters for each unit.

Commissioner Winston questioned if the applicant was tied to the Ivy for the majority of landscaping, stating Ivy was prone to getting trampled on, catching debris and animals were attracted to it. Mr. Lee said the Ivy was for the hillside and the more leveled area is planted with Star Jasmine. He said the Ivy would be maintained and controlled in order not to take over the Star Jasmine.

Commissioner Winston questioned if the applicants met with the neighborhood council regarding the parking, and Mr. Lee said he attended a meeting who brought up the concern, but after they discussed the project, they felt parking was not a problem.

Public Comments:

Eleanor Loynd, Chair of the El Sobrante Planning and Zoning Committee and May Valley Neighborhood Council, said after attending the DRC meeting on April 2nd, she discussed the project with committee members and their consensus was 1) they support the conversion of the apartments to condos; however, they urged the Planning Commission to approve the recommendation to change the description to 10 one-bedroom condos and 2 two-bedroom condos, which would eliminate the parking variance requirement; 2) that each building have a separate water meter and individual gauges be put on each unit so that the HOA could have some information to look at to see how to divide up the water bill; and 3) that the owner provide information and resources to tenants.

Commissioner Harris said the DRC met on the project and some items were discussed to incorporate into the conditions, as follows: 1) that the incorporation of public utilities including but not limited to water, gas, power and sewer be incorporated into the final recorded map; 2) that any revisions to sanitary sewer conform to West County Wastewater District standards and

also that they be incorporated into the final recorded map; and 3) that the pest reports for units 1-10 and 11-12 dated May 26, 2006 by David Meyer be revised and incorporated into the final recorded map.

David Barbary gave the staff summation, stating staff's recommendation is for the Commission to direct staff to incorporate additional conditions, and staff was not sure whether the difference between a one-bedroom and two-bedroom condo would make much difference. If separate meters were obtained, a new water meter would cost approximately \$5,000 to \$8,000 which would be passed onto the future owners, staff recommends addressing all health and safety issues to convert the units, and if the parking variance cannot be justified staff would ask that the Commission give direction as to which finding cannot be made.

Commissioner Harris asked that the revised conditions as discussed by him should be incorporated, and he felt the Commission should still incorporate the additional condition that the public utilities be incorporated into the final map.

Chair Finlay asked that a condition require the applicant provide two new pest reports; one for each building, that they are dated no less than four months from the building permit, and as part of the requirement, all further inspection items shall be performed and completed by the applicant prior to the sale of the units. She said there was a substantial amount of follow-up inspection items contained in each of the pest reports. She also wanted language in Condition O that should there be concealed damaged areas in Section I or Section II items of the report, these areas should be opened with further inspections performed, and all damaged areas shall be repaired prior to the sale of the units. Therefore, she asked that Condition O be modified.

Commissioner Winston asked if the applicant was amenable to the revised conditions, and applicant concurred to having a termite report prior to the sale of the units.

Vice Chair Williams asked to place a condition on the approval that the units shift to 10 one-bedroom units and 2 two-bedroom unit allocation. **Commissioner Winston** said it was her understanding that the condominium conversion triggered the parking requirement and **Mr. Barbary** agreed and said at the time the project was originally constructed, the parking ordinance was not the same as now and the City did not require those additional spaces for a 12 unit building.

The public hearing was closed.

ACTION: It was M/S (Harris/Rao) that the Planning Commission adopt the variance findings 1-5 and approve the requested parking variance to reduce the required number of parking spaces from 19 to 15 spaces and adopt Resolution 07-01 in Exhibit A making the requisite findings of fact as described for Tentative Subdivision Map Section 66473.5, 66473.4, and 66473.6 of the Subdivision Map Act, and by Section 15.08.635 Condominium Community Apartments Cooperative Conversion Regulations, Ordinance No. 8-83 of the Richmond Municipal Code, thereby conditionally approving TM 1102938 incorporating Conditions A-O as listed in the Resolution with modification to Condition D, that it be revised to state, "All inspections shall comply with building, mechanical, plumbing, electrical and energy calculations in accordance with California Code of Regulations, Title 24, along with accessibility with that and Municipal Code regulations in effect at the time of issuance of building permit resulting in actual construction"; (cont'd on next pg)

Modification of Condition O to state, "As part of the building upgrade the applicant shall provide updated Section I and Section II pest control reports for all units within the existing apartment buildings and that these pest control reports be dated within four months of the issuance of building permits. *Accepted amendment by Finlay:* (All further inspection items called for in the reports shall be performed and all work required to provide certification for the scope of work detailed, as further inspections shall be completed by the applicant prior to the sale of the units. Should there be concealed damage areas in any Section I or II items in the reports, these concealed areas shall be opened and further inspections performed. All damaged areas shall be repaired prior to the sale of the units.)" The addition of Condition P to state, "All public utilities including but not limited to water, gas and power shall be incorporated into the final recorded map" and add Condition Q to state, "All sanitary sewer modifications shall conform to West County Wastewater District standards and shall be incorporated into the final map." Vote: 6-0.

- 2. EID 1102584 – Civic Center Phase I Renovation at 2600 Barrett Avenue - PUBLIC HEARING** to review the DRB Subcommittee recommended conditions of approval for the design review process for the Richmond Civic Center located at 2600 Barrett Avenue. The City has formulated a master plan concept for the phased renovation, retrofit and expansion of the Civic Center complex. The project before the Planning Commissioners is discretionary design review approval for the Phase I drawings which include renovation, seismic retrofit and expansion of the existing City Hall building; improvements to the Auditorium and landscaping in the Civic Center plaza, PC (Public and Civic Uses) Zoning District and Public and Institutional/964 General Commercial/922. City of Richmond, owner; Richmond Community Redevelopment Agency, applicant. Tentative Recommendation: Conditional Approval.

Janet Harbin gave a brief description, stating the Commission had reviewed the item in November 2006 and was referred back to the Design Review Board. The DRB selected a subcommittee to work with staff and the applicant and arrived at several conditions and modifications which were discussed at the DRC meeting on Monday. She noted Steve Duran was present to discuss changes and answer any questions regarding the item.

Steve Duran, Community & Economic Development Director, said the renovation Phase I project includes the total renovation of the City Hall building, Hall of Justice, parts of the auditorium and the Civic Plaza. He said the bulk of the work was structural and interior and most items presented would be landscaping, plaza and exterior appearance of the buildings. He asked Jake Tobias to provide an overview of the landscaping and Mike Walden of Nadel Architects to discuss project architecture.

Jake Tobias, WRT Landscape Architects, briefly discussed landscaping, stating it was a full renovation, and includes Nevin Street frontage, 27th, Barrett and the plaza. He said the work incorporates green design elements, bio swales and low water use planting and irrigation, and spaces for a variety of uses.

Mike Walden, Nadel Architects, said they are planning complete renovation of City Hall and the old Hall of Justice, said the intent is to completely redevelop the interiors to modern standards, bring the outside of the buildings up to date centering on a complete re-glazing systems, the ground floor City Hall is being expanded with an additional 3,000 square feet, adding a glass

covered canopy at the plaza level to connect up with the north and south original links for City Hall, as well as for the Old Hall of Justice.

Chair Finlay asked how many issues were on the table between staff, the applicant and the subcommittee of the DRB and what the final outcome was. **Mr. Duran** said there were over 100 comments from the DRB members, architects and staff. From that, subcommittee members came up with 69 conditions for approval relating to design. Of those, 60 were agreed to by the design team. Of the 9 remaining, 6 have minor modifications and 3 are proposed by the applicant's design team to be deleted.

Chair Finlay thanked subcommittee DRB members Michael Woldemar and Jonathan Livingston who spent many hours meeting with the design team.

Commissioner Winston asked if the changes to the conditions 20 and 22 and 27 and 28, and felt there was some leeway. She has not heard an explanation of the deletion of 36, 39 and 40. **Mr. Duran** said 36 was the bulb-out along Nevin. They have not included the re-design of Nevin in Phase I and they want to look at it from 27th to 24th before they commit to design treatment. There are also some issues of engineering when bulb-outs are done, which would add complexity to the current phase. Regarding condition 39, sloping of the ground, he said this was a disagreement between what staff feels is a better treatment of the plaza. Staff believes the original historic flat plaza is what they want, as well as what the community voiced in the past. No mounds or hills were wanted at that time. **Commissioner Winston** felt it was inappropriate for staff to remove certain conditions and questioned the decision-making authority.

Chair Finlay said the Commission requested staff provide an alternate set of conditions, and this was not a substitution, but to clarify and no decision has been made.

Mr. Duran referred to Condition 40, stating the consensus between everyone was that it was too vague. He felt it was not an enforceable condition. **Chair Finlay** read the original mitigations and they were broad.

Commissioner Harris said subsequent to Monday's meeting, he felt we could incorporate the thought behind condition 40 to tie it down a little more, which he would bring up later.

Commissioner Rao was opposed to mounding and wanted the applicants to discuss beautification efforts in the plaza. Jake Tobias gave a short PowerPoint presentation of the design of the plaza.

Public Comments:

Ted Smith, DRB member, said one of the reasons why he wanted to speak was that his teacher brought him as a child to the original groundbreaking, said a committee of the DRB reviewed the project many times and he gave DRB member Woldemar full credit on working through changes. He said DRB member Woldemar had resigned recently and wanted the credit that was due to him.

Commissioner Winston confirmed with Commissioners that a summation of the project by staff was not required again.

The public hearing was closed.

Commissioner Winston said in recognition of the DRB, she wanted to pull items 36, 39 and 40 and discuss them because there was no explanation. She commended the Subcommittee for their thorough review. **Chair Finlay** agreed and said she did not know how the planning Commission would be able to perform Design Review, as it encompassed so much work.

Commissioner Harris said the DRC discussed striking Condition 40, and he felt the concern needed to be addressed and felt the condition was vague. He recommended modification of striking the first five lines. In line 6, he suggested it state, "The design of the gathering and the sitting areas of the east and west side spaces of the Civic Center Plaza under the double rows of trees shall be subject to review and written approval by the Planning and Building Regulations Director or designee prior to the issuance of a building permit." He felt they could go further and get into the discussion of benches with backs, tables with benches, but this might be too much.

Chair Finlay noted the applicant was in agreement with that modification.

Vice Chair Williams said being extremely familiar with costs incurred, he understood Condition 36, as there were all sorts of underground utilities which would fall on the City and taxpayer. He commended the entire design team in achieving an environmental design, the silver standard for the green building standard and thanked them for working with staff and the subcommittee.

MOTION: Commissioner Harris moved that the Planning Commission adopt findings of fact and approve DR 1102584 on the renovation and seismic retrofit of the Phase I project of the Civic Center complex, 2600 Barrett Avenue, subject to Conditions 1-69 stated in the staff report, with modified conditions of approval to Conditions 11, 20, 22, 27, 28, 36 and 39 as stated in the April 5, 2007 memo from the Planning Department. And further, a modification to Condition 40 stating that, "The design of the gathering and the sitting areas of the east and west side spaces of the Civic Center Plaza under the double rows of trees shall be subject to review and written approval by the Planning and Building Regulations Director or designee prior to the issuance of a building permit", And lastly, modification to Condition 45 following as was stated in the modified conditions with the simple additions of the words, "the design of the north side doors shall be framed and submitted to staff for review."

PROPOSED AMENDMENT: **Commissioner Winston** asked for an amendment for the doors to be approved by the Planning and Building Regulations Director. **Chair Finlay** said the reason this was included was the fact that the porte-co-chere canopy was returning and another condition. **Mr. Duran** said the parking on the northeast corner, because of the relocation of the City Council Chambers to the north wing, would be brought back. Staff will make some modifications to provide security as well as the framed door with Condition 45. **Commissioner Winston** withdrew her amendment to the motion.

ACTION: It was M/S (Harris/Winston) that the Planning Commission adopt findings of fact and approve DR 1102584 on the renovation and seismic retrofit of the Phase I project of the Civic Center complex, 2600 Barrett Avenue, subject to Conditions 1-69 stated in the staff report, with modified conditions of approval to Conditions 11, 20, 22, 27, 28, 36 and 39 as stated in the April 5, 2007 memo from the Planning Department. (cont'd on next pg)

And further, a modification to Condition 40 stating that, “The design of the gathering and the sitting areas of the east and west side spaces of the Civic Center Plaza under the double rows of trees shall be subject to review and written approval by the Planning and Building Regulations Director or designee prior to the issuance of a building permit”, and lastly, modification to Condition 45 following as was stated in the modified conditions with the simple additions of the words, “the design of the north side doors shall be framed and submitted to staff for review.” Vote: 6-0.

- 3. GPA/RZ/V 1103430 – General Plan Amendment, Rezone and Variance at 327 South 4th Street** - PUBLIC HEARING to consider a request for Planning Commission recommendation to the City Council for a General Plan Amendment with rezone to MFR-3, and variance. The GPA, Rezone and variance would allow the creation of two 4,219 square foot parcels where the Zoning Ordinance requires a minimum lot area of 5,000 square feet each. The property is located at 327 South 4th Street (APN: 550-161-023). SFR-3, Low Density Residential District. Humberto Quintero, owner; Ekundayo Sowunmi, applicant. Tentative Recommendation: Recommend Denial to City Council.

Lamont Thompson gave a brief summary of the request, stating the triplex was legal non-conforming, and applicant’s proposed division of land was not in conformance for a number of reasons; if parcelized, the density of the lot would result in 16 units per acre, which exceeds the range of 9 to 5 as designated in the General Plan and the proposed lot area of the triplex would be 2109.5 square feet per unit which is lower than the 3750 square foot minimum lot area required by SFR3 zone.

He noted that in order to be in compliance with the General Plan the applicant would need 15,488 square feet of land, and currently the applicant has 8438 square feet of land. However, the applicant has requested a hearing for consideration before pursuing other options.

In conclusion, **Mr. Thompson** said the project does not meet the minimum standards for lot size and density and staff concludes the application should be denied. The Planning Commission should direct staff to prepare and return with a resolution that reflects the desire of the Commission. He noted that denying the applicant’s request would not deprive the owner of a viable use of the property, as the site was currently improved with 4 residential units with parking. The property has a higher density than currently allowed which makes the site more economically productive than other projects in the area. The applicant can maintain existing 4 units as legal non-conforming into the future as long as the structures are properly maintained.

Commissioner Winston questioned whether the main reason for denial was because of the current use of the property, as the Commission has had other General Plan and rezoning requests with larger magnitudes. **Mr. Thompson** said the site is a very small site, serves one property owner, and the community would be better served by looking at the entire SFR3 district because other multi-family units that could benefit in the immediate proximity that could benefit from a General Plan amendment. He noted the General Plan update was approximately one year away.

Commissioner Winston questioned if all projects in the future requesting a general plan amendment would be recommended for denial because of the General Plan update process, and **Mr. Thompson** noted each application was reviewed for its merits, and staff feels this could be considered “spot zoning” which is when the City does not take into consideration the overall

character of the surrounding area; there are single family residences with one multi-family project.

A representative of the applicant, said the applicant could not be present tonight, said without discussing the project from any technical standpoint he believed the project was of strong benefit to the community. He noted it was a property that was run down and abandoned before being purchased. He said the parking arrangements would accommodate those living there now, and he felt there were also those in need of housing.

Commissioner Winston asked if the representative wanted to continue the item due to the applicant being out of town, and the applicant's representative said he would like to move forward.

There were no public speakers.

Mr. Thompson gave staff summation, stating staff recommends that the Planning Commission direct staff to return with a resolution that makes the recommendation of denial of the applicant's request, and makes a recommendation to the City Council that staff be directed to study the applicant's request for a general plan amendment and rezoning to MFR2 as part of the General Plan update for the greater surrounding area, including the subject property.

The public hearing was closed.

Commissioner Finlay agreed with staff and felt it was spot zoning, and **Commissioner Winston** agreed and said it was one of the smallest parcel she had ever seen.

ACTION: It was M/S (Winston/Harris) to recommend that staff return with a resolution making a recommendation of denial of the applicant's request to the City Council and makes a recommendation to the City Council that staff be directed to study the applicant's request for a general plan amendment and rezoning to MFR2 as part of the General Plan update for the greater surrounding area. Vote: 6-0.

- 4. CU 1103840 – A Bank at the restored Trainmasters Building on Northwest corner of Garrard Blvd. and West Richmond Avenue - PUBLIC HEARING** to consider granting a Conditional Use Permit for a bank at the restored Trainmasters Building located on the northwest corner of Garrard Blvd. and West Richmond Avenue. (No APN). PC (Public & Civic), Zoning District. City of Richmond, owner; Mechanics Bank, applicant. Tentative Recommendation: Conditional Approval.

Commissioner Lee noted he would recuse himself from participating on the item due to his extensive participation on it, and stepped down.

BREAK

The Commission took a brief break until there was a quorum, and reconvened the regular meeting.

Lina Velasco gave the staff report and request to locate a bank in the historic Trainmasters Building, said the use is a conditional use, cited the proposed hours, and would require improvements be made to the site subject to review and approval by the DRB. She said the

proposed use satisfies the four criteria for approval of a conditional use permit. A letter was also received earlier today from Walter Connolly, owner of 135 West Richmond Avenue.

Ms. Velasco said the relocation of the building was approved by DRB in April 2005, which included rehabilitation of the building and for an easement and closure within a portion of West Cutting Boulevard, which was not before the Commission tonight. Regarding parking, they would be able to provide parking for the use, will also be proposing a kiosk subject to DRB approval.

Commissioner Winston confirmed that the item was removed due to the letter being received in opposition, and there were speakers.

Chair Finlay confirmed the ATM was a walk-up only, there were four spaces adjacent to the building and street parking on both sides of the site. **Ms. Velasco** said the 8 spaces would be expanded to 11 with an additional 8 spaces, as well. She said the Plunge parking was adjacent to the bank parcel, with 8 parking spaces.

Commissioner Rao questioned the total number of spaces required for the bank, and **Ms. Velasco** said 10 spaces were required and they will provide 20 spaces.

Commissioner Harris said he noticed one condition was that the site was also subject to approval by the Historic Preservation Advisory Committee and the Design Review Board. Usually, those conditions come forward prior to the Planning Commission's review and approval. **Ms. Velasco** said staff has in the past brought forth issues of land use in order to determine them prior to the Design Review Board's review. The applicant would go forth assuming the use was allowed.

Brian Hodges, applicant, Mechanics Bank, said the press release was intended as a kick-off announcing the project, it was meant to announce they were moving forward, that they had reached an agreement with the owners of the building and would start the design review and planning process. He provided a history of their reason for locating at the site, felt it was good visibility, access and its historical tie-in, as they are celebrating their 102nd year anniversary and the building was about 100 years old. Larger reasons were their stance with partnering with communities, he read their mission statement, and felt it was an incredible opportunity and add benefit while serving business needs.

Regarding use of the land, Mr. Hodges said they intend to relocate a retail branch office as well, said their hours of operation are standard, said rent being paid would go to the non-profit organization which would go back to the community, they would be doing all site improvements and landscaping, they will increase parking, will be adding a bike lane on Garrard Boulevard, and they have visited the local neighborhood council and land use council regarding the site. He said the face of the building will have a large deck as requested by the community so that public programs and performances can occur and they were providing access to the local historic society for displays, as well.

Public Comments:

Margaret Morkowski, member of Pt. Richmond Historical Society, noted the bank approached them and she felt this was a positive thing. She was also the president of the Women's West Side Improvement Club and would have their centennial next year. Their club truly supports the project and cheered when they heard of the proposal. She noted Mr. Hodges was once a

manager at the Richmond office and he has a soft spot in his heart to do a good job for the entire plan and she was in favor of the request.

Robert Lane, said he read the objections to staff by Mr. Connolly regarding traffic, parking and emergency vehicles; however, those issues have been covered by the closing of Cutting Boulevard. He failed to see in Mr. Connolly's objections any objection to the project itself or the use of the building. He believed the traffic was more orderly and if the neighborhood council president was present he would indicate that the reason for the closure was related not only to this project but to the Wig Wags at the train crossing as well. He noted the rent from the bank goes to the non-profit which will in turn push it back into the City, which will be a benefit. The site, building interior and other improvements would occur and would provide a gateway to Point Richmond. Parking was improved and increased, the neighborhood council met, reviewed and supported the project, and Mr. Connolly did not appear at the neighborhood council meetings and asked the Commission to approve the request.

BREAK

The Commission took a brief break due to quorum requirements, and then reconvened the regular meeting.

Richard Lompa, said he was supportive of the application, but not the way it was being presented. He said he has always been against closing Cutting Boulevard, felt the Plunge would be a very nice place and he hoped the citizens got a great deal of benefit. He felt 23 parking spaces was naïve, said the lot behind the Trainmaster building would be great to locate the bank and would provide more parking for everyone and felt it would be a disaster without using the lot behind the vacant lot for parking.

Martin McNair, President of the Point Richmond Gateway Foundation, owner of the building, said he found it difficult to find Mr. Lompa in a transitional mode because years ago he originally disagreed with the building's restoration. He was proud of the proposal, hard working volunteers, and the bank that stepped up to the project and felt it was an incredible statement for Pt. Richmond. He found it ironic that those who opposed it like Mr. Connolly and Mr. Lompa have no parking, but he felt most residents would love to have the entrance of Point Richmond enhanced, felt the project completed this in a first class way, and said the bank had the means and interest to do this. He urged the Planning Commission approve the proposal, and apologized for the press release, noting the details were somewhat misleading by the press.

Commissioner Rao asked that when the project was brought to the neighborhood council, was there discussion on parking spaces for the bank. Mr. McNair said there was no opposition and they were actually increasing the parking.

Commissioner Harris asked who owned the parcel to the northwest, and Mr. McNair said it was owned by an LLC of 10 owners who live in Pt. Richmond, that it was .9 acres, and was being held for future development.

Walter Connolly, distributed the site plan and photos, said he owns the building across the street from the project, said he got involved last July to get an EIR on the project, he read the minutes of when it was approved to move the building and at that time, DRB member Woldemar felt it was an incomplete project because there was no site plan. Approval was given to relocate the building on Cutting Boulevard. It then went to the permit stage, the Planning Department did not sign off the permit which was procedural, and felt needed was an overall master plan. He felt the project was being approved in a piecemeal fashion and felt an EIR was needed.

Mr. Connolly noted parking was eliminated in front of Plunge and where the railroad crossed, and photos taken of parking between 12 and 1:00 p.m. this date proved parking was needed. He also felt the approval process was out of sequence; by approving the land use prior to design review. He felt his tenants had a right to park, asked for the project to be further studied, sent to the DRB first, a master plan be prepared and approved and an EIR be done.

Larry Foster, said he has been in the building that Walter Connolly owns for two years, said he had received and paid approximately \$1,500-\$2,000 in parking tickets during that time, said there is very limited parking, he is disabled and there is no handicapped parking currently and asked that more be provided.

Rebuttal

Brian Hodges, Mechanics Bank, said regarding the building's compliance with the Secretary of Interiors standard, they hired an approved City historic architect who prepared a report that the project was in compliance with those standards. They have pulled back their site plan and decreased the project to provide additional diagonal parking of 8 spaces along Garrard Boulevard. He felt the cost of relocating the building would make it financially infeasible for the bank, they sought input for traffic and parking from various City departments and the Design Review Board, and part of the design would also include handicapped parking.

He said when the Secretary of Interior standards were approved, the relocation of the building was not taken into consideration, said there is no handicapped parking, felt the project was out of sequence, needed a master plan, an EIR, traffic counts, wondered where employees would park, felt the agreement between the developers and the City was a sweet deal and felt profit should include good master planning and CEQA.

Lina Velasco said the neighborhood council also provided a letter of support, said staff's recommendation was that the Planning Commission approve the statement of facts and findings 1-4 and approve the conditional use permit.

The public hearing was closed.

Commissioner Winston felt the testimony and project were very straight-forward, acknowledged the discussion regarding the order of approvals, felt because the request had been parsed down to a conditional use it could be approved because it is exactly the type of project where a lot of work goes into it, it goes to the Planning Commission who then feels pressured. She felt the use was appropriate for the location and the Commission could act on the use issue. **Chair Finlay** confirmed with staff that CEQA did not come into play, and **Ms. Velasco** said all approvals were contemplated and occupancy of existing facilities were found to be exempt. She said the Design Review Board will only look at modifications of a previously approved site plan.

Commissioner Harris questioned what the 2005 CEQA analysis was at that time, and **Ms. Velasco** said the Design Review Board's action included a determination that the project was exempt under Section 15331, rehabilitation of existing structures in accordance with the Secretary of the Interior's standards. She said a report was provided at that phase of the project, and a report will confirm that this is currently the fact.

Commissioner Rao referred to an unsigned map by the Planning Department, and **Ms. Velasco** said there was a disposition and development agreement which was signed with the non-profit organization. It is a project where they are blending a public works project with a staff project and it was noted that staff did not sign off on the building permit issued for the foundation work.

Commissioner Winston noted the Commission had not heard anything about whether or not the 4 findings could be met by the conditional use. She felt that when the Commission approves CUP's, it includes parking and required number of spaces. She said it was not included as a condition and felt it would be appropriate to add it as a condition. **Ms. Velasco** felt the parking ratio should be 4:1000 square feet of developed area.

Commissioner Harris noted the parking ratio is exceeded and the applicant has also identified 20 non-handicapped spaces plus 2 on-site that front the street.

ACTION: It was M/S (Winston/Rao) that the Planning Commission adopt the statement of facts and findings 1-4 and approve CU 1103840, a request to operate a bank in the restored Trainmasters Building subject to conditions 1-7, revise Condition 8 to say that the parking ratio is 4:1000 square feet of developed area, and make Condition 8 that states "This CUP shall not be effective until conditions of this section have been fulfilled" as Condition 9. Vote: 6-0.

7. EID/TMP/GPA/RZ1102306 – Canyon Oaks II at Castro Ranch Roads - PUBLIC HEARING to consider certification of an Environmental Impact Report and approval of a General Plan Amendment, Rezoning and Tentative Subdivision Map to allow construction of 36 detached single-family dwellings, including four custom homes sites; associated utilities infrastructure and roadways; improvements to the intersection of San Pablo Dam and Castro Ranch Roads; and, establishment of a 300-acre land bank. The project is located south of San Pablo Dam Road near the intersection of San Pablo Dam and Castro Ranch Roads, adjacent to and northwest of the existing Canyon Oaks I development. The project also requires a Lot Line Adjustment. Assessor Parcel Numbers for the site include 573-020-009, 010, and 011. Zoning Districts SFR-1, Single Family Low Density Residential, C-2, General Commercial, and EA, Exclusive Agricultural; and General Plan designations of General Commercial/922, Very Low Density Residential/ 942, and Preservation Resource Area/941. TJG/Summit Development Corp., owner; John Zentner, applicant. Tentative Recommendation: Conditional Approval.

Chair Finlay announced to all present that if the Commission finds it will not have sufficient time in which to complete the agenda, they may continue a portion of it to a subsequent meeting and will attempt for the benefit of the public in attendance to do this at an early hour. If not all items are completed by 11:00 p.m., the Commission will continue the remaining items to another meeting unless time is extended by a 2/3 majority vote of the Commission. In any event, it is the intent to conclude all public meetings by midnight.

Associate Planner Whales confirmed the Commission had revisions submitted by staff.

NOTED PRESENT:

Noted present were Commissioner Lee and Assistant City Attorney Mary Renfro.

Associate Planner Jonalyn Whales described the residential project and its location, noted the development site was 22.16 acres, included four parcels, and the applicant was seeking development of 36 detached, single-family dwellings, including 4 custom homes on a 22 acre site. The entire project is approximately 372 acres of which 328 are being proposed for a conservation bank. Planning entitlements include environmental review, certification of an EIR, general plan amendment, rezoning and a tentative map. Also, staff will be bringing an application forward to a subsequent meeting for a conditional use permit for conformance with the hillside physical constraint area.

She said staff is recommending that the Planning Commission recommend to the City Council certification of the Final EIR, the mitigation monitoring and reporting program, approve a general plan amendment, and recommend that the City Council approve the rezoning and adopt the resolution to certify that the EIR is adequate to support approval of a tentative subdivision map.

Ms. Whales said currently the site is zoned General Commercial with a very low density residential, as well as a preservation resource area. The applicant is proposing to change the parcels to very low density residential as well as include a preservation resource area. The zoning is being changed from a C2 General Commercial which will allow medium density residential, so therefore, the applicant could very well develop townhouses or condominiums the way it was currently zoned. The applicant would also like to maintain zoning as SFR1 for one of the parcels. The applicant is also proposing that the large parcel for the conservation bank actually have a zoning designation of CRR, which is Community Regional Recreation District as well as the adjacent parcels to be SFR1, which is single family residential, and then to have exclusive agricultural.

She said staff was recommending approval of the tentative tract map for the 32 single family homes on Lots 1-14 and Lots 19-36 would also be similar to the current density in Canyon Oaks I. The applicant is also proposing four custom home lots for lots 15-19 at the site.

Staff has gone through environmental review, there was a scoping meeting held on June 29, 2005 in which staff received several comments from the community. In turn, the City published a Draft EIR on October 13, 2006 for a 45 day comment period. She said considering there was a holiday that fell within that 45 day review period, the applicant agreed to extend the period to December 16, 2006.

She introduced Mary Bean from Circle Point to discuss the environmental review process.

Mary Bean, Circle Point, EIR consultant, presented a slide presentation to the Commission showing an aerial of the size of conservation land bank and area for subdivision development. She said she wanted to discuss some of the issue areas, noted construction noise was the only significant and unavoidable impact found in the EIR, said the daytime maximum level was 75 decibels, construction activity and equipment would exceed temporarily that limit for adjacent properties. The mitigation measure plan would require temporary noise barriers which would help, but would not fully mitigate the impact and this was why it was significant and unavoidable.

Regarding transportation, she said new traffic counts were gathered along San Pablo Dam Road done in January 2007 confirming that the existing level of service was A and future levels would continue to be A including a growth factor based on the CCTA travel demand model. The project includes a connection to San Pablo Dam Road, they heard from Newberry property owners that they are in support of the connection as well as the City, and she presented a visual simulation of existing and future conditions of the roadway improvements.

Regarding hydrology, the project incorporate vegetated bio swales, bio retention areas to meet or exceed C3 requirements and the draft EIR includes the entire storm water treatment plan for review.

Regarding geology, she said the site will include several areas of unstable slopes and soils primarily in the area of the custom home lots. Mitigation measure includes below grade retaining walls to provide bracing and shoring needed and was found in the Soil and Hydrology mitigation measure 2. She displayed areas of the custom home lots. She noted the production home portion of the site would need to be completely excavated and re-compacted.

Regarding access, a letter was received from East Bay Regional Parks District on the draft EIR, noting the City has a policy that requires access to adjacent parklands be provided. There are additional trails along the site that do provide access through the conservation bank to Wildcat Canyon. One or more of those trails would be enhanced to meet Fire Department requirements and she displayed the area of those trails.

Regarding biology, they looked at tree removal and many comments were received regarding this. They also reviewed tree replacement, special status species, creek setbacks and restoration plans. She presented the vegetation site, tree removal site area; said 10 would be removed adjacent to lots 20 and 21. She displayed the tree replacement area focusing on the northern slope leading down to Hunter's Lane where the majority of the trees would be removed, as well as creating a landscape buffer by Trailside Drive and those homes above it. There was also another buffer behind lots 30 to 36 where tree replacement would occur.

She displayed potential habitat areas for the Alameda Whip Snake and hatch marks which identify those areas are designated as critical habitat. The project included analysis by qualified biologists which concluded there were no snakes on the site or suitable habitat for them. However, the Fish and Wildlife Services has designated the area as being a potential critical habitat area and may require additional surveys or the applicant to set up traps and try and catch snakes to prove they are either present or absent from the site, and they included a mitigation measure that should that occur, the applicant would be required to have a biologist on site during removal in order for them to be safely relocated with snake proof fencing set up to ensure they do not re-enter the site while construction is underway.

Regarding visual quality, the Draft EIR included simulations of the project site from Hunter's Lane and from Trailside Drive. The FEIR, in response to comments, included two additional simulations to try and address comments and concerns people had raised. The project and proposed landscape buffer would obscure views from homes along Trailside Drive up towards San Pablo Ridge.

The view from Canyon Creek Drive to the north would not obscure the view to the ridge to the north and she noted visual simulations that address elevations and pads and architecture for detailing.

Regarding the hillside ordinance, the CUP is not before the Commission tonight, the project would involve grading on hillside slopes, would require the use of retaining walls, some are in excess of 4 feet in height as specified in the ordinance and higher walls would require Planning Commission approval as part of the CUP. She presented the various sloped areas on the site and noted these would require Planning Commission review, as well. She also presented a graph showing retaining wall locations, which would require approval as part of the CUP.

She noted grading of the north slope towards Hunter Lane requires tree removal and because of the varying elevations between San Pablo Dam Road and the connection to Canyon Creek Drive requires that you have a study slope within engineering requirements, and also a 2:1 slope to the north towards Hunter Lane down from the roadway. Even if you did not have the lots adjacent to the roadway, the slope would still need to be graded for having to construct the road itself and they provided two cross sections which show existing grade and proposed grade in the Final EIR.

Regarding the conservation bank, they received questions and comments which would require review and agreement with the Fish & Wildlife service and possibly the California Department of Fish and Game. She said establishing a bank includes the creation of credits based on the habitat types within a certain radius, and other developers within a certain radius of the site could purchase credits if they are not able to mitigate impacts on their own site. The purchase of those credits provides funding for the maintenance in the bank in perpetuity, and each credit could only be sold once.

Commissioner Winston said she noticed on page 12 of 13 in the staff recommendation number 1 and said it should reference Exhibit B. She noted Action number 3 on that same page should refer to Exhibit D rather than Exhibit A. **Commissioner Harris** confirmed that Exhibit D which was the tentative tract map.

Commissioner Winston referred to the EIR, she asked what goes into thinking when the alternative projects are determined. She read the FEIR and it seemed to her that if you were going for the most logically environmentally superior alternative, it would have been a combination of Alternative 3 and 4, as she felt less grading did not impact the custom homes; it was more about the intersection.

Ms. Bean said they assess what the impacts would be and alternatives are chosen to reduce or avoid impacts while still achieving the project objectives. So, the custom home lots would avoid certain impacts associated with development on the upper slopes.

Commissioner Winston noted that what they do is take one component and treat that as an alternative, and Ms. Bean said hopefully it addresses all of the components of interest in terms of having significant or significant and unavoidable impacts.

Commissioner Winston also questioned some of the impacts such as visual, traffic, and they only mainly looked at that site per se. She asked if anything was done which was broader outside of the area. Ms. Bean said traffic was a concern of the neighbors in Canyon Oaks I. She said because the existing Level of Services A with no effect of the project bringing it to Level B, it was not something they focused on as trying to find an alternative that would reduce an impact.

Commissioner Winston asked if the letter designations changed, as she noted there was an A that used to be an F. Ms. Bean said it still follows the same logic; A is the best level of service and F is the worst. The applicant submitted the traffic report which they peer reviewed and they found it to be acceptable. They had found that the existing condition was level C which was still acceptable, but when new counts were done, it shows to be actually better.

Commissioner Winston said she has seen previous counts that had areas of level F, so she questioned whether cumulative feeders were reviewed that are all coming to the intersection. She also questioned the visual impact and concern with those in Canyon Oaks.

Ms. Bean said because there were such a small number of lots, it does not have much of an impact down line. Regarding visual impacts, they look at impacts from publicly accessible locations, such as trails and parks. The hillside ordinance takes it a step further and asks you to look at views from other private property, and this was located in the DEIR on page 4.5-8. One view was taken from the San Pablo Ridge trail and also a view to the edge where it drops off. **Commissioner Winston** felt these were difficult to follow, said she lives in the area and felt it was hard to find a spot.

Commissioner Winston said a term in the document under traffic impacts is used called, "incrementally greater" and she asked if this was used as a period of time undesignated in the future, was it to mean not much, or much but not now and confirmed with Ms. Bean that this meant that it would never change from "not significant".

Commissioner Winston referred to page 5-14 in the DEIR, Table 5-1, and said when you look at traffic with reduced grading, you have "impact greater than the proposed project" and for Alternative 4 "greater" and she felt the chart led one to believe that traffic does have an impact and felt this was misleading. Ms. Bean said under the existing alternative 2, you could actually have a general commercial route there, so you could have a convenience store or something that generates a much higher rate of traffic, so they wanted to make that clear. Under reduced grading, part of that alternative was not creating a connection to San Pablo Dam Road and people would travel through Canyon Oaks Road, so they felt that would be an impact that would be felt by local residents as opposed to others.

Commissioner Winston referred to the retaining wall slide that talks about the height being something for a future action, it seemed to her that the ability of taking action on a tentative map and tentative subdivision map, the Commission would need to know what is a reasonable number of lots to develop on the map and if there are retaining walls that exceed the hillside ordinance, why are we acting on a tentative map that assumes that the lots can be developed, yet the Commission has not yet decided from a conditional use point of view whether or not retaining walls in excess of 4 feet can be allowed.

Assistant City Attorney Mary Renfro said the way the applicant has asked to bring this forward does make the decision making process difficult for the Planning Commission. The Commission must first look at the EIR and decide if it gives you enough information for the Commission to make a determination on the project approvals. The primary project approvals are a tentative map and a conditional use permit. The EIR has to be adequate to cover both of those items, but the applicant has not yet brought forth all the information and they are not applying for the CUP at this time.

Commissioner Lee asked why the applicant has not applied for the CUP and felt it seemed like a backwards process. **Assistant City Attorney Renfro** said because this project site is within something called the Hillside Physical Constraint Area, and everything in that ordinance needs a conditional use permit. Another issue that makes it difficult for the Planning Commission is the ordinance is very fluid and it has very few absolute prohibitions. So everything requires the Commission's consideration as to whether it is consistent in this context; such as are the trees being removed for a permissible reason, etc.

Commissioner Winston referred to the EIR, said the CEQA guidelines allow replacement or substitution of trees, however, when you have 399 trees, half of which have been deemed as significant, she asked how this could not be of extreme significance. She said it talks about immature trees eventually getting bigger and there were more of them, but did not feel it was insignificant. Ms. Bean said they looked at the fact that there were more than 10,000 trees that would not be removed in the conservation bank area, so within the context it was not a great percentage.

Commissioner Winston said CEQA only refers to the destruction of trees in the actual areas to be developed and that area could never be developed without tree removal. Ms. Bean said CEQA asks that we define the significance and impact and we define it as a significant impact. CEQA then asks if it can be mitigated and under the City's tree protection ordinance, mitigation is a 3:1 ratio, which can be done within the development's boundaries. Larger trees are required in the landscaped buffer area, so you would get that immediate buffering. She said the question becomes more of a policy from the Commission as to whether this is minimizing or not.

Commissioner Winston felt the hillside ordinance was one of the policies or plans that one needs to conform to. Ms. Bean agreed, and they look at whether there is a way to avoid that. If they took away those lots that extend out in the hillside area, would it help or not, or could they avoid having to remove those trees while grading, and the answer was no. That simply by having to make that connection between San Pablo Dam Road and the stub at Canyon Creek and the side slope requirements from the engineering standards of the City, it would require that tree removal anyway. So, it becomes the question of having a road or not having a road.

Commissioner Lee asked what prompted the design for the road going into San Pablo and felt there was another potential access. Ms. Bean said initially the applicant did not propose having that connection; There was a desire on the part of Canyon Oaks I residents to have a second access to allow them more easily to make left hand turns onto San Pablo Dam Road, as well as from police and fire departments for safety.

Commissioner Winston felt it was important to remember on this particular item that Canyon Oaks was approved with the understanding that if there were to be a Canyon Oaks II that it would go through Canyon Oaks Drive and not via San Pablo Dam Road.

Commissioner Rao referred to unstable areas on the site, and asked why kind of studies were done by seismologists or scientists. He also wanted to know the impact of grading on the site. Ms. Bean said regarding seismic analysis, there are active faults that cross the site, but certainly the Bay Area is riddled with faults. The UBC code requires structures be built to a certain standard to withstand maximum credible earthquakes, so it would be subject to those requirements. Regarding on-site soils stability, page 4.2-5 is a landslide map, there are many areas shown testing was done on the site. The applicant hired a geotechnical firm that prepared 2-3 geotechnical reports and the City also hired a geologist to ensure their recommendations were sound. So the EIR was based on this conclusion and peer review.

Commissioner Winston said she found it would have been helpful also to have an overlay which would clearly show where the lots are designated and where trees are to be removed and replaced.

EXTEND MEETING

MOTION: It was M/S (Harris/Winston) to extend the meeting to 12:00 midnight.

ACTION: It was M/S (Rao/Lee) to substitute the motion to extend the meeting to 11:15 p.m. Vote: 2-4 (Finley, Harris, Winston, and Williams voted no); motion did not carry.

ACTION: It was M/S (Harris/Winston) to extend the meeting not to a point which would exceed 12:00 midnight. Vote: 5-1 (Rao voted no).

John Zentner, Zentner and Zentner, applicant, Orinda, thanked staff for their assistance, presented a short slide show describing the property, noted that 70 acres of the total were below the 400 foot line which was zoned as SFR1, said the proposed entry of the site was off Castro Ranch Road and San Pablo Dam Road, said there was almost 30,000 cubic yards of material on the site because of the construction of Canyon Oaks I; however, the knob is being preserved, discussed the land bank and felt the site was a truly ecologically magnificent part of the El Sobrante area. He said in 1988 the site was approved for 1200 homes by the City, said Jonathan Livingston actually worked on the design of the project originally. Canyon Oaks I was approved in 1998 which resulted in construction of 65 homes and since then several other projects have been proposed for the project site.

He briefly described the proposed project, project approvals, and said all of the homes were below the 400 foot contour line unlike homes on the County's property. They reviewed many of the comments the City and others had made on other proposals, said most noticeable in their previous proposal was a cul-de-sac near Castro Ranch Road, and the project was originally not going to move between the intersection at San Pablo Dam Road; however, several neighbors and the City recommended they make that connection and they did so.

He noted the roadway connection had significant implications for their design which have been discussed which include extensive grading and tree loss. The project consists of establishment of the conservation bank and establishment and approval of homes and he noted the bank would preserve over 16,000 mature trees, said grading will need to occur whether or not homes are built, but they tried to be more sensitive to the hillside ordinance issues, and they will be able to reduce the flooding to the north in the Hunter's Lane neighborhood.

He said all water draining off of their site tends to sit on Hunter's Lane and by reducing the watershed significantly and they can reduce or almost eliminate flooding in their neighborhood. They also have been able to cut into the bank at San Pablo Dam Road and implement a retaining wall and create a bus turn-out for southbound buses on the road. They also have worked with AC Transit to create a bus turn out on the north side as well. He felt the conservation bank was important, said it was a for profit effort that will allow other communities and Richmond to mitigate for impacts to species such as the Alameda Whip Snake by buying credits in the bank. They have a great deal of interest in seeing the bank move forward, but they must go through the CEQA process first and seek approvals from Fish and Wildlife services which would take about one year. He noted they would also work with East Bay Regional Parks District with fire roads.

Commissioner Harris said with respect to the Canyon Oaks II subdivision, he confirmed with Mr. Zentner that one parcel would be dedicated as SFR3 and the others would be divided into both an SFR1 and SFR3 zone, and the SFR3 zone is part of 32 units and SFR1 portion was the 4 custom lots.

Mr. Zentner said given the current zoning, there was presently the potential of 127 to 175 new homes allowable and permissible on the site, but they are proposing 36 homes which is a significant reduction. They have been in the process for over a year for the project and said they have been very happy in working with City staff on it. He noted that during the DRC discussion on Monday they discussed the possibility of modifying some of the conditions and he distributed a handout of those suggestions.

Chair Finlay said she received a letter from the Contra Costa County Public Works Department and she confirmed he did not see it, but he had spoken with Ms. Whales about the letter. She said their Public Works and Community Development Departments did not receive any notices of the project. She wanted to confirm she did not receive any phone calls from Supervisor Gioia and Mr. Zentner said his assistant has worked very closely with them on the project and additionally, they presented the project to the homeowners group and have a letter of support from the El Sobrante MAC. He personally discussed the project with Contra Costa staff at least 2 or 3 times, their engineer has consulted with County public works staff significantly at the beginning of the project as well.

Commissioner Winston referred to the proposed amendment to the zoning ordinance, she questioned whether the conservation land bank was going to be used to restore otherwise lost or fragile species. Mr. Zentner said the bank is based upon the species already present on site and he does not anticipate trans-locating any species with the possible exception of the red-legged frog or the California tiger salamander; however, it is probably that there would be fragile species that will be moved there through the Department of Fish and Game.

Commissioner Winston felt the purpose of the bank was that the land was set aside so that when species are being lost somewhere, they can be moved onto that floor or fauna, which is incorrect.

Commissioner Lee confirmed with Mr. Zentner that he would stand to profit from the credits, and this was one of the reasons why they have an incentive to get the bank established as quickly as possible. Mr. Zentner said there will be some time before they register any profits, as for the first 3 to 4 years, 80% of the revenue generated will go into the long term endowment fund, which goes to fund maintenance for the fire roads, litter cleanup, vegetation and weed control removal.

Commissioner Harris said one of the things they discussed at DRC was how to incorporate the four lots into the HOA. The language for this has been adjusted, which he appreciated, but he asked that considering the parcels containing the custom lots also include some of the lots in the 32 lower homes, was it possible that this parcel could be divided into two other parcels; one portion of it containing those that will be part of the 32 homes and another portion containing the four custom lots. This way, a separate subdivision would be made of the parcel so that the four custom lots could be created with their own HOA. Mr. Zentner said theoretically yes, but practically speaking, he felt it was very difficult to do an HOA with that low number of units. However, there are other options such as a maintenance association, but this would not have lien power. In discussions with the Canyon Oaks I, that was one of the primary factors in creating the HOA in the residential project. He explained there were significant storm water treatment programs in the 32 production homes, which the estate lots will not have and they should not be paying for that work. At the same time, they do not nearly have as much cost associated with tree loss, so costs can be apportioned simply depending on lot size.

Regarding the way the applications were brought to the Planning Commission the way they were, Mr. Zentner said they realize the workload of staff and the Commission and hoped to be done prior to midnight.

Public Comments:

Eleanor Loynd, Chair of the El Sobrante Valley Planning and Zoning Advisory Committee, said they did not receive the staff report until Monday morning and an additional staff report was distributed at the DRC meeting. She requested the speakers listed be sent copies of what was distributed this evening, felt the Planning Commission was being dumped on tonight to have to deal with the EIR, the map, the general plan amendment and rezoning all in one meeting. She felt there were some serious concerns, asked that the EIR not be certified, that an addendum be required to add and correct information. She said in a letter from Zentner and Zentner, he calls this the El Sobrante Ridge Conservation Land Bank and this is not El Sobrante Ridge, which is another series of hills along Castro Ranch Road, and the name of the ridgeline was San Pablo Ridge. They need more details about the fire roads. She said the Fire Marshall said the fire roads are not roads, but trails and we need to know more about that. She asked who chose the location for the roads, asked if anyone has looked at the roads, were they in the best geological place, and if someone grades them, would this make the City liable if there are landslides. Regarding lots 15 to 19, those were landslides with underground walls, and some of those walls were 40-50 feet long. They wanted a geologic hazard abatement district discussed because it means there would be money set aside if and when there were landslides and she noted there were many. She noted there was a Cypress tree on the Clark Road site, which was not identified in the EIR, she presented a picture of a Manzanita tree which was also not included and she asked the City to look at the Tri-lane site because of the nexus next to the conservation land bank before it is separated because there may be some special thing on the site that we should know about. Regarding whether or not the Tri-lane entrance should become a signalized intersection, they would like to see this happen because of increased traffic. Regarding the alternative project of 32 units, also discussed was putting the 21 acre Tri-lane site into the land bank and then the Planning Commission approve the four estate lots. To her, this is something they could live with because then the Tri-lane site is surrounded two sides by the conservation bank, and she did not feel the project EIR should be certified at this time.

Commissioner Lee confirmed Ms. Beasley was speaking in favor of the project, and Ms. Loynd said the conservation land bank is something that saves building on the landslide ridge and she felt 36 homes was a lot better than what was previously proposed.

Barry Johnson, President of Summit Development, owner of the property, said he has been involved with the property for 15 years, said previously very aggressive projects were proposed which did not take into account the sensitivity of the area and did not succeed. He felt from his experience would be to be a good neighbor and to develop a project that added value and was a compliment to that area, and this was why he suggested taking over 300 acres in a conservation bank. They feel that 36 units was a conservative approach, adds a positive result in the area and as the remainder of the site matures, there will be improvements to fire roads, trails, trees, etc. He felt the project has been well thought out, it was intended to be a project that complimented the area and was designed with neighbor's concerns in mind, and he hoped that the Commission views it positively.

Joanne Spalding, El Sobrante Valley Legal Defense Fund, said they appreciate that it is much smaller than some of the prior proposals, they still have concerns about the EIR and operation of the land bank. Regarding the hillside ordinance consistency, the Commission is not

considering this, but she felt it was still relevant because it must be considered in an EIR as a policy that applies to this project. The project would require extensive grading on slopes that are over 30% as well as removal of nearly half of the trees on the project site designated for building. She quoted the hillside ordinance section, stating that “development and limited grading can only occur if it clearly done so that detrimental safety, environmental and visual impacts are avoided” and felt this was not consistent with the hillside ordinance. She felt it would also create a precedent for other development that would also violate the ordinance. The fact that there is public interest in having the roadway connection does not necessarily override the fact that the City is not subject to the hillside ordinance. If the City approves the proposal, it should only do so if it can distinguish this project from other proposed projects that would require substantial grading and tree removal on steep slopes. She felt it could not be justified based on preservation of the land in the land bank and felt there was no guarantee that the land would be permanently protected. She noted also on page 3-43 of the EIR explicitly states that the land bank is not part of the proposed project, so it does not justify the significant removal of trees and grading. Regarding the land bank, if the Commission considers it to be part of the proposed project, then preservation of it should not be contingent on the approval of the Fish and Wildlife Service and Department of Fish and Game. The approval of the land bank should be required even if the approval of those agencies does not come through because the EIR assumes there is permanent protection, but that protection is not assured. The analysis in the EIR justifies the development and the consistency of the hillside ordinance by looking at the entire parcel as a whole and by relying on the fact that only a small portion of the entire site and a small portion of the total number of trees will be affected. This analysis is fundamentally flawed unless the City requires assurance that the land will not be developed even if the agencies refuse to approve the land bank. Another deficiency in the EIR is that it does not discuss in any detail the types of impacts that would result from other developments that would be allowed that the land bank may facilitate. She felt there was no acknowledgement that a large scale development proposal could move forward by using credits from the land bank and these are indirect potential impacts of the project and CEQA requires analysis of those impacts as well. The EIR is also deficient in its analysis of the area where the estate lots would be. They do not consider these lots as part of the project in the environmental analysis. She noted there was separate environmental review and this was improperly segmenting the project which is not allowed under CEQA. The landslides on that portion of the site are only addressed in a very cursory way. The EIR also defers analysis of the project’s impact on the Alameda Whip Snake. The designation of the snake’s critical habitat is new information since the draft was released and it was not considered in the DEIR. Under CEQA, significant new information about the impacts must be addressed in a supplemental EIR. In this case, the analysis should include the trapping survey results and doing a survey after the approval of the EIR was backwards. She also commented that the area on the project site designed as critical habitat for the Whip Snake overlaps to a large extent with the estate home portion of the site and so, an alternative to eliminate the estate homes would remedy this CEQA violation. Also, under CEQA all feasible mitigation measures addressing significant unavoidable impacts must be required and it was impermissible to defer this decision. At this point, she felt the EIR was deficient and should not be certified. In terms of the project as a whole, she believes with the significant draining and tree removal, it violates the hillside ordinance and the Planning Commission does not really have a basis at this point to find that it is consistent with the hillside ordinance.

Chair Finlay referred to the statement that there was nothing in the document that ties the creation of the land bank as a mitigation factor, and asked if this would be resolved by a condition that states that the project cannot move forward without the creation of a land bank. Ms. Spalding said yes, that could resolve it or it could be resolved by imposing some

requirement that it be some sort of conservation easement requirement in lieu of the land bank, if the land bank were not approved.

Brenda LaPlante, said she was pleased to see a number of items in the consistency analysis moved from being consistent to being potentially consistent or inconsistent because she agreed that a lot of things deemed consistent were not. Regarding concerns, she was anxiously awaiting the City's ruling on the letter dated May 13, 2003 that states that there was no way the land could be developed as it relates to a City Attorney comment. On November 2nd, Commissioner Williams asked that the City Attorney review this and return with an official comment and she has yet to see this in any of the documentation relating to the hillside ordinance. Regarding the project's relation to the Canyon Creek connection to the new Canyon Oaks, there seems to be some misconceptions on their opinion on it; they desperately would like a one-way street. This cuts the traffic in half and it allows for traffic to likely go to San Pablo Dam Road, so if this is what will happen with the traffic patterns, it makes sense to allow for the access to come one way through their neighborhood into the next, but not necessarily to allow traffic out of our neighborhood. This was something she would like corrected. She hears a lot about home values and what is happening in the county right now and she voiced concern with the size of the lots and the homes and the price at which the builder will be selling them as it relates to her current value of her home. She lives in one of the most impacted homes in the neighborhood; they will be behind lots 31 and 32, so the comments made in the FEIR about views being available, they will not have one because they were on the same elevation level as the homes which completely destroys their views. She took pictures which would show the impact to their views. If the project gets approved, she said they do appreciate what the applicant has done to address their concerns and she would like to be part of the construction management plan development process to ensure it does not infringe on the hillside ordinance, and asked that the City Attorney still rule on the letter which is still in question.

Assistant City Attorney Mary Renfro said following the November 2nd meeting she looked at the letter which had been submitted, which was attached to a comment, and she advised the planner and the environmental consultant that the letter in question does not address any specific project, least of all this project, so it was of limited use because it is not a practice of lawyers to interpret legislation out of the blue. We apply it to a certain principle issue or project. The section quoted in the memorandum applies only to Richmond Municipal Code Section 15.04.510.030.b.4.b and there is one small section pulls out, which only applies to the mitigation of geological hazards. It was not clear why the memorandum was written, but the actual question was not listed and it was not written about the Canyon Oaks project, so she read it and found it potentially taken out of context and misleading when you read the entire hillside ordinance. She noted the memorandum was to the attention of Joe Light, and Mr. Light indicated the memorandum was regarding fixing geological hazards any way and whether it overrides every other consideration and why that particular section was quoted for analysis. The hillside ordinance must be looked at as a whole in what is its general purpose, and in general, it does not have many hard and fast rules. She said she found one concerning retaining walls; if a retaining wall is along a road it cannot be more than 4 feet in height. In general, it requires that grading be sensitive; that tree removal be minimized and what that does is it gives the decision making body a lot of discretion to make decisions on a case by case basis. She felt to prove consistency here is hard because it was such a fluid ordinance and decision makers need to have the information presented to them in a clear way; it is not as simple as saying, if the slope is over 30% grading is forbidden.

Marc LaPlante, said if the proposal is approved, their house is one of the most impacted houses as a result of the new project, felt the elevation of the new houses will be above their house

elevation and their view of the ridgeline will be greatly compromised. They submitted pictures from their backyard to illustrate that and commented on the EIR to the same, and also, she asked that if the Commission considered the design of the new homes, could they think about minimizing the impact of views by working with the builder to put some single story homes in the area to help their views. Also, they wanted clarification regarding the landscape buffer between the two communities. The greenbelt buffer was to be a 20 foot land buffer between their existing fence line and the new fence, and they would like to see both communities have 20 foot buffers for a total of 40 total feet. Also, in between the buffer, they would like trees planted as well.

Rebuttal - Applicant

John Zentner, said he recognizes Ms. Spalding's concern about the precedent and the issue, and they have suggested that they would be willing within a condition, to agree to a condition that requires them to put a conservation easement over the bank prior to any development on the Tri-lane site. This holds the site hostage and provides an easement that would preclude any future development on the conservation bank. He felt there would be a few homes affected by the project, said the families have been great to work with, but in all fairness to the project, this is the first El Sobrante project he has been at where there were three opposition speakers. Normally, there are 30-40 and he felt this says something about the project. He noted he also reviewed the 2003 attorney opinion and he agrees with Ms. Renfro because this was two years before they even started planning the project.

Commissioner Winston asked if they could contact the Greenbriar Neighborhood Council which overlooks this project as she was the President, as well as the El Sobrante Hills Neighborhood Council.

Commissioner Rao referred to the land bank stating suppose it does not get approved, and asked what would happen to the 32 unit development, and Mr. Zentner said it would not affect the development at all.

Rebuttal - Speaker – None

Commissioner Winston said she put together a motion to handle the three action items. She wanted to float it by the Commission to determine if it would get a second in order to tie some things together, and if not, the Commission will need to continue the public hearing until we can act. She noted her motion would not involve a lot of conditions at this point, and **Chair Finlay** said no matter what the Commission does, there are some inconsistencies that will need to go on the record before voting on anything so that they are dealt with.

Chair Finlay confirmed the motions can be done separately, but the certification of the EIR must be done first and she proposed a motion:

MOTION:

1. Commissioner Winston made a motion to adopt the resolution recommending the City Council certify the Final EIR and approve a proposed amendment to the general plan as shown in Exhibit B, given that Exhibit B and other exhibits will be modified to show the actions already taken by the DRC or incorporated in testimony tonight; to approve the residential project, with amendments to the mitigation and monitoring program as follows:

- 1) Regarding the use of retaining walls, retaining walls will conform to the hillside ordinance regulations 4.B(1)J and 4.D(1)B to be constructed at the minimum height which is 4 feet and if lots 2,7,8, 9, 10, 11, 12, 13, 14, 23, 25, 26, 31 and 32 come out safe and soundly be developed with this height restriction, then the mitigation and monitoring program is to require that the tentative subdivision map be revised to conform to the maximum requirement of 4 feet;
 - 2) Regarding tree preservation, a site development plan should demonstrate that diligent effort has been made to retain as many significant trees as possible according to hillside ordinance regulation 4.A. The purpose of the regulation is to retain resources that contribute to the character of an area and there is sufficient grassland available at the site to minimize the destruction of significant trees; the mitigation and monitoring program is to require a definitive subdivision map be revised to conform to the regulations; the ordinance does not address parcel areas not being developed, and the FEIR and mitigation measures refer to the retention of open space as one of the measures to lessen this impact and replacement of trees was another, so she felt the mitigation and monitoring report needs to be modified to not take the entire parcels of land, but just what is being developed; the hillside ordinance regulations preservation of natural resources A through F also require retention and integration of mature trees into the development; removal of half of the 399 mature trees does not find this requirement existing mitigation B.I.A-4.4 deems that tree replacement program renders the impacts of the destruction of 197 important significant trees to be less than significant. .4 should be amended to require redesign of the tentative subdivision map to retain and integrate mature trees into the development;
 - 3) Regarding Grading: Hillside ordinance regulation 3.A.4.b requires a minimum grading and alteration of natural land forms. The mitigation and monitoring program was revised to eliminate the proposed intersection at Castro Ranch and San Pablo Dam Roads and revise the tentative map to eliminate the lots that would require the alteration of natural land forms;
 - 4) Add mitigation measure—soil, hydro, 2G geologic hazard abatement district with landslide mitigation funds to be set up; and
 - 5) Incorporate the Tri-lane site in the cumulative impacts and mitigation and monitoring program throughout.
2. To adopt the resolution recommending the City Council certification of the Final EIR Exhibit A and adoption of the ordinance and zoning ordinance in Exhibit C as amended for the Canyon Oaks II residential project;
 3. To reject the resolution certifying the Final EIR Exhibit E as adequate to support the approval of the tentative parcel map, and based on the Commission's inability to make findings through 3E and 5. 3E; the design of the subdivision is not likely to cause substantial environmental damage or substantially unavoidable injury to fish or wildlife or their habitat; that the failure to utilize grading as defined in the hillside ordinance, the project sponsor failed to conduct the timing for Fish and Game until approved and the needed protocol trapping program to determine whether or not the whip snake would be harmed as a result of the project and therefore as the wildlife and habitat would not avoid injury and the trapping should take place prior to the approval of the tentative subdivision map; vegetation removal is to be minimized however the statement that this criterion is conditionally satisfied fails to mention the loss of trees. Currently there are viable alternatives to minimize the loss of significant trees and they are not taking into account the design of the subdivision as presented;

4. Regarding the reference to the repair of the riparian corridor, only mention is made for trees and shrubs in the Final EIR, appendix C, page 1, so she was not sure how many were trees and were shrubs.
5. She is unable to meet finding 5, the approval of the tentative tract map which would permit development of the project site with 32 detached homes and four custom homes as part of the residential subdivision project will not result in a number of significant adverse impacts on the environment. The tentative map currently does not conform to the revised mitigation and monitoring program and if you adopt the first option and the design of the project fails to mitigate the most significant adverse impacts to the environment.

Assistant City Attorney Mary Renfro said as she sees it, a clarification of the action being taken would be to approve the EIR as amended, then recommend approval of the EIR as amended to the Council and to the Council, recommend approval of the rezoning and general plan amendment and then the third part of the intent is to say not to approve the map, and **Commissioner Winston** agreed that this was her meaning of the motion.

Chair Finlay said it is unusual for the Chair to make a motion, and she asked the Commission to consider a substitute motion for Commissioner to give all of her notes to staff, for staff to draw up a document that incorporates all of the notes and the motion, to be distributed to not only to the Commissioners so we can deliberate and understand the implication of all of the varied parts of the motion and amendments, and it would give the opportunity to the applicant to see what they can do and not do and that part of the motion would be then to continue the hearing until the next appropriate for everyone to review it and give it the consideration it deserves. She felt staff has time to draw it up and it will be supported by appropriate findings and that the applicant and public have the opportunity again to understand the implications.

Assistant City Attorney Mary Renfro said the net effect would be instead of Commissioner Winston's motion, a motion would be to continue, staff would be directed to draft up the motion and amendments, but the basis of the motion would be to continue rather than take action. Staff would be instructed to, by using the tape or notes, to redraft all of the comments in writing. **Chair Finlay** requested it be circulated it as quickly as possible.

SUBSTITUTE MOTION: Chair Finlay made a motion to continue the public hearing, and to provide all of Commissioner Winston's comments to staff, to be distributed to the Commissioners, applicants, and the public. Commissioner Winston seconded the substitute motion.

Commissioner Harris felt his primary comment was going to be incorporation of the various modifications to the conditions, as stated in resolution 07-04 and he felt this would be important to try and cover tonight. He noted a minor item in Exhibit C, Resolution 07-03, which related to page 3, Section 2.C., and said in looking at the project as is, he was not sure whether we can say right now that the criteria has been satisfied. He feels it can be satisfied, but some additions to the utility infrastructure may be required in order to make it work. We talked about the fact that there may be improvements to the water infrastructure, but with the existing system as is, it does not currently meet the criteria. He suggested saying that the "criterion is conditionally satisfied".

Chair Finlay felt this modification could also be added to Exhibit C.

Regarding Exhibit D, page 6, Section 2, Item 5, **Chair Finlay** noted it states that the project applicant shall merge the 21 acre Tri-lane site into the land conservation bank prior to final map recordation and this acreage may not be subdivided or developed as a separate parcel in the future. This is in contradiction to what it states in Exhibit E, first page, and the applicant has also proposed a revision that states, prior to the development of the 21 acre Tri-lane site, the project applicant shall dedicate to the City a conservation easement or other instrument satisfactory to the City Planning Director over the land conservation bank. So, she felt there were a variety of statements and asked for direction that would be given to staff to take on this condition. She noted this would also affect number 6 of that same document.

Commissioner Harris said going back to the DRC meeting on Monday, they held discussions. One of the things discussed was the merging of the Tri-lane site into the land conservation bank to be somewhat contingent upon the approval of the four custom lots. If it seems like that would lean towards that, then we should most likely look at the language that had been submitted to us by the applicant because it covers that idea. **Chair Finlay** questioned what the applicant's statement actually meant.

Mr. Zentner said he was trying to say is that prior to any development on the Tri-lane site, in case the conservation bank has not been established at that point, they would place a conservation easement satisfactory to the City on the bank to ensure that the bank would be preserved in perpetuity. So, the way it parallels that, is it is part of the Canyon Oaks II project we are proposing a down zoning of the bank, with the possibility that you do not believe that is sufficient surety, and we are essentially saying the 21 acre site is the hostage.

Chair Finlay said, however, what is not stated at the DRC is the merging of Tri-lane into the conservation property, and Mr. Zentner said that was correct. Mr. Zentner said he was not suggesting trading off the Tri-lane site for the four estate lots, and he said they were not willing to do that. He said he wanted to be clear about that.

Chair Finlay felt we could also choose to allow the development of the 32 lots and not to allow the 4 custom homes in the most volatile of the landslide areas, lots 15-19 because it is considered by the DEIR and FEIR as the most desirable of the alternatives. So, she felt this was not off the table either, and Mr. Zentner said this was not preferred but the statement was correct.

Chair Finlay felt modifications that should definitely be included were on page 8 of the resolution, number 11, the second line; "...the liabilities that the developer may have to the City" and asked to include the word, "the".

Regarding the next paragraph, number 12, the sixth line down, it should read the City of Richmond and not the City of Oakland.

Further down below, "Overall monitoring and compliance with the mitigation measures should be the responsibility of the Development Director", and asked that it be changed to the "Planning Director."

She said the applicant has said in his suggested modifications to the EIR that regarding the homeowners' responsibilities that they are amenable to the inclusion of the front yard landscaping in the list of responsibilities of the HOA, and she felt this should also be incorporated. She felt the Commission must still determine what was needed about the HOA extending to the custom home lots.

Commissioner Rao noted it was 5 minutes to midnight, and the Commission felt the item should be continued with incorporated changes.

The Commission discussed possible dates to continue the item to be heard, and consensus of the Commission was to continue the item to April 26, 2007.

ACTION: It was M/S (Lee/Rao) to continue EID/TMP/GPA/RZ 1102306 to April 26, 2007 and direct staff to provide all of Commission amendments, comments, and notations to be distributed to the Commissioners, applicants, and the public. Vote: 6-0.

COMMISSION BUSINESS

8. Reports of Officers, Commissioners and Staff

Chair Finlay noted Commissioner Rao was appointed as head of the nomination committee to serve as secretary for the remainder of the term. **Commissioner Rao** said Commissioner Lee and Chair Finlay met and recommend that Commissioner Winston serve as Secretary.

Chair Finlay noted a vote would be taken at the next meeting and **Commissioner Winston** agreed with the appointment as Secretary.

Commissioner Winston, as Chair of the Rules and Procedures Committee, reported that a quorum was based on a majority of the full compliment of 9 members; so a quorum remains at 5 members, and 2/3 vote was 6 members. **Chair Finlay** confirmed that the Commission could vote tonight on the committee's recommendation.

ACTION: It was M/S (Rao/Lee) to approve the recommendation of the Rules and Procedures Committee. Vote: 6-0.

Chair Finlay said that although the Rules and Procedures Committee calls for a vote of officers for the Planning Commission in July, they would not have a quorum in July. **Assistant City Attorney Mary Renfro** said a body interprets its own rules and a quorum is a majority or 5 members. It is incumbent upon the City Council to rectify the situation by making appointments and ensure there is a Planning Commission. She felt the Commission would not be disbanded but would incur an operational lag. **Chair Finlay** voiced concern with a body of 3 members and she said she would leave the question on the table.

Ms. Renfro noted the future of the Design Review Board would be discussed, an ordinance would be presented on June 5 to the City Council, there was still question about the motion from February 20, noted the new Planning Commission would still be proposed at 9 members with compensation, but clarification would be presented on June 5, 2007.

Commissioner Lee said he attended the Planning Institute Mini Expo and learned that the City of Danville Planning Commission has alternates and he strongly suggested adding some alternates.

Commissioner Rao said he also attended the Institute, and cities were stressing the importance of design review and simple guidelines that are put in a check-off type of order for ease.

Chair Finlay thanked the planning staff for putting together the results of the Design Review study.

Adjournment

The meeting was adjourned at 12:14 a.m.
