

**PLANNING COMMISSION MEETING**  
**COUNCIL CHAMBERS, RICHMOND CITY HALL**  
1401 Marina Way South, Richmond, CA  
July 12, 2007  
7:00 p.m.

**COMMISSION MEMBERS**

Virginia Finlay, Chair  
Zachary Harris  
Jeff Lee  
Vacant

Vice Chair Stephen A. Williams  
Nagaraja Rao  
Vacant

The meeting was called to order by **Chair Finlay** at 7:13 p.m.

**Vice Chair Williams** led in the Pledge of Allegiance.

**ROLL CALL**

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

**Absent:** None

**INTRODUCTIONS**

**Staff Present:** Lina Velasco, Hector Rojas, Janet Harbin, Mary Renfro and Richard Mitchell

**MINUTES – July 12, 2007 Joint City Council/Planning Commission Meeting**

**Commissioner Rao** requested amendment to the minutes to read and include somewhere that, “He understood there would be commercial entertainment for Richmond Community’s Families and Children, and this idea was supported by some City Council and Planning Commission members.”

**Chair Finlay** noted her name should be spelled, “Finlay” on page 2, and she asked to change the Planning Director’s name from “Rich” Mitchell to “Richard” Mitchell.

<p><b>ACTION: It was M/S (Rao/Williams) to approve the joint Minutes of the City Council/Planning Commission meeting of July 12, 2007, as amended; unanimously approved.</b></p>
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**CONSENT CALENDAR**

**Chair Finlay** said Items on the Consent Calendar 1, 2 and 3.

Janet Harbin noted there were several changes to conditions contained in Item 1 as a result of the DRC meeting. **Chair Finlay** requested Item 1 be removed from the Consent Calendar due to the new information being presented to the Commissioners which were comments and responses for the mitigated negative declaration and because of extensive revisions.

Janet Harbin said there was a minor change in the condition regarding fencing on Item 2, which was discussed at DRC and requested a condition relating to fencing be added to the general conditions for metal fencing only, rather than fencing that contains a wooden gate.

**Commissioner Harris** felt Item 2 should remain on the Consent Calendar and confirmed there were no speakers.

**ACTION: It was M/S (Rao/Williams) to approve the Consent Calendar consisting of Items 2 and 3, incorporating the revisions to Item 2; unanimously approved.**

**Items Approved:**

2. **CU 1103246 – Building Trade Studio at 909 Ohio Avenue** - PUBLIC HEARING to consider a Conditional Use Permit and a Mitigated Negative Declaration to construct six (6) live/work units at 909 Ohio Avenue (APN: 538-420-001). The project proposal includes a request for exceptions to development standards for setbacks and floor area ratio. Light Industrial (Knox Cutting Specific Plan) Zoning District. Kyle and Natalia Reicher, owners/applicants. Tentative Recommendation: Conditional Approval.
3. **CU 1103502 – Marina Live/Work at 900 Block of Marina Way South** - PUBLIC HEARING to consider approval of a Conditional Use Permit, a Mitigated Negative Declaration and Mitigation Monitoring Program for 64 live/work units on a vacant parcel located on the west side of the 900 block of Marina Way South between Wright Avenue and Regatta Boulevard (APN: 560-260-054). (Knox-Cutting Specific Plan: R&D/Business, Light Industrial and Sub-Area D). David Spatz, owner/applicant. Tentative Recommendation: Hold Over to 8/2/2007.

**Brown Act**

Herk Schusteff, Save Richmond Scenic Hillside, said the Force Green EIR has been re-released to the public with technical changes, it proposes 120 homes on 80+ stream and forested acres above Richmond/El Sobrante Valley which he felt would severely disfigure the defining features and key natural asset of the region. He felt there had been no genuine efforts to compromise with community interests, although the superior environmental alternatives on pages 5-456 is an excellent starting point, wherein it proposes 33 homes on a less slide prone unforrested area along the northern site boundary. However, this alternative would only be considered if the Planning Commission and Council find for no project. He said over 60 speakers unanimously opposed the project, discussed City fees, debt, and legislation and public interests of the EIR process and said for more information, visit [www.saveelsobrante.org](http://www.saveelsobrante.org) or herkart.com.

**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 July 23, 2007, by 5:00 p.m. and announced the appeal process after each item.

**Items Discussed:**

1. **MND/TM/CU 1103713 – 21 Lot Subdivision at 25 Harbour Way** - PUBLIC HEARING to consider approval of a Tentative Subdivision Map (MS 9194), Conditional Use Permit for a Planned Residential Group and Mitigated Negative Declaration and Mitigation Monitoring

Program for 21 single-family residential units on a mostly vacant parcel located on the west side of Harbour Way, between Ohio Avenue and Chanslor Avenue, and extends to the east side of Ninth Street (APN: 538-430-014, -019). MFR-1/C-2 (Multi-Family Residential and General Commercial) Zoning District. 25 Harbour Way LLC, owner/applicant. Tentative Recommendation: Conditional Approval.

**Commissioner Harris** said the DRC met and unanimously recommended to the Planning Commission approval of the project with amendment to certain conditions. Ms. Harbin said staff has prepared changes on Exhibit A that show the revised language and **Commissioner Harris** provided a brief synopsis, stating there were modifications to conditions 4, 14 and 19. Other issues did come up, staff has clarified the language and he said Ms. Harbin would make a presentation of the changes.

**Chair Finlay** disclosed that she met with the developer of the project and architect on two separate occasions.

Ms. Harbin said at the DRC meeting, it was determined changes were appropriate to be made on conditions 4, 7, 8, 14, 18, 19 and 24 of Exhibit A for the 25 Harbour Way Planned Residential Group.

**Condition 4:** The second sentence was removed and added to the first sentence, a “t” after “no” and added another sentence that reads, “Separate City approval will be required for any changes proposed to the green way.” She said as necessary, areas within the right-of-way would require an encroachment permit. The DRC wanted to ensure the provision for interactive use between the greenway and walkway in front of the development.

**Condition 7:** Add to the sentence; “...and the plans for the project shall be amended prior to the submittal for building permits to define the walkway along Harbour Way as public. Variance in the standard walkway design are encouraged.” She said there was discussion about a possible meandering walkway.

**Condition 8:** Staff removed Item D, which related to, “No cellular or telecommunications antennas shall be permitted on the buildings.” She said the ordinance does allow the possibility for attachment of these types of antennas to residential buildings and in the future, it should be amended rather than place a condition like this on a project.

**Condition 14:** Changed the first line to read, “If the City Engineer determines the current public sewer system connection on the property is inadequate to serve the proposed project, the sewer line shall be upgraded to a necessary capacity required following approval by the City Engineer and the Sanitary Sewer District.”

**Condition 18:** Added at the end of the line, “...and use open metal work for all of the fencing on the site.”

**Condition 19:** After “free of obstructions”, the words were added, “and be enhanced with pavers or similar materials.” There was discussion of using pavers or some other material in walkways to achieve more interest. Added at the end of Condition 19 was, “..and be included on the Final Map.”

**Condition 24:** Added a line, “If a bulb out is necessary for Fire Department access, it shall be designed with Planning and Fire Services staff to be of a complimentary design.”

**Chair Finlay** suggested that the first line of Condition 8 be revised and **Commissioner Harris** noted the revised sentence was, “The developer shall record CC&R’s that include the following:”

**Chair Finlay** referred to Condition 8.a., and asked that it be changed to read, “Maintenance of the common area and front yard landscaping shall be maintained by the Homeowner’s Association.” In addition, there were comments and responses for the mitigated negative declaration before the Commission, and she asked staff to review those items to highlight any changes.

Lina Velasco said staff received two comments prior to the DRC meeting, which were provided and on Tuesday, staff received a letter from DTSC inquiring about additional information and response. She said Richard Grisetti from Grisetti Environmental Consulting was present to review those responses and comments.

Richard Grisetti, Grisetti Environmental Consulting, said there were three comment letters received:

- 1) East Bay MUD, which was a standard comment letter noting the project shall comply with the landscape water conservation and the City’s municipal code, and that the applicant be notified of East Bay MUD’s service estimate and lead time requirements;
- 2) The Department of Toxics Substances Control, expressing a concern that because the building on the site was old and because there was storage of pesticides in the early 1960’s, that an analysis be done and consideration be made of the potential for site contamination from pesticides and lead based paint. The applicant had originally prepared a Phase I environmental assessment that showed the site to be clean. A Phase II environmental assessment was done focusing on automobile motor oil and hydrocarbon issues and not on lead paint and pesticides. So the applicant’s environmental representatives prepared a follow-up letter today and indicated that while such contamination may be possible very close to the building in a small portion of the site, there are standard methods to test and clean the soil of those materials. Therefore, in the response to comments, they summarized DTSC’s concerns and changed the conclusion from “less than significant” to “less than significant with mitigation” and added a mitigation measure requiring sampling and clean-up be done prior to issuance of a building permit or grading permit, which was included on pages 8, 9 and 10 and the additional language was underlined, and on page 13, the mitigation monitoring program was also revised to include the new mitigation measure. Mr. Grisetti said the applicant’s consultant contacted DTSC this afternoon, but did not reach him and he felt the measures should satisfy DTSC, and he confirmed that the parameters of the investigation shall be developed in consultation with DTSC.
- 3) Friends of the Richmond Greenway, expressing concern that residents accessing the project from Harbour Way may impede and cause safety issues with bicyclists using Harbour Way to get to the green way. They reviewed the issue initially and determined that the maximum peak hour traffic generated by the project would be around 35-36 trips per hour, or 1 trip every 2 minutes or so and determined that it would be unlikely the problem of safety associated with bicyclists. However, there is mitigation measure 15-1 in the Initial Study that notes that entry gates at the proposed driveways shall be sufficiently recessed to prevent entering vehicles from queuing on Harbour Way as

determined by the City of Richmond's Public Works Department. The Friends of the Greenway also requested that all access be not off of Ohio, which is a design issue.

Wayne Isin, Manager of 25 Harbour Way, LLC, said they agree with the report and revised conditions.

Ms. Harbin said staff recommendation is for the Commission to adopt a motion to approve the project as well as a resolution to be adopted, subject to modified conditions.

**Commissioner Harris** noted that with the additional mitigation measure, Exhibit B will need to be amended, as well.

The public hearing was closed.

**ACTION: It was M/S (Harris/Rao) that the Planning Commission adopt Resolution 07-11, approve the Mitigated Negative Declaration and Mitigation Monitoring Program as Exhibit B with the addition of Mitigation Measure 7-1; and approve TM/CU 1103713 for the 25 Harbour Way Subdivision, subject to conditions of approval in Exhibit A, with changes to conditions 4, 7, 8, 14, 18, 19 and 24 as put forth in the record; which carried unanimously.**

**Chair Finlay** read the appeal procedure for the item.

**4. EID/TPM 1103631 – Three (3) Lot Parcel Map at 125-127 Western Drive - PUBLIC HEARING** to consider approval of a Parcel Map (File # 1103631), a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for three lots for property located at 125 - 127 Western Avenue (APN: 558-020-007), SFR-2, Very Low Density Residential Zoning District, Pt. Richmond. John and Paige Poulos Woolley, owners/applicants. Tentative Recommendation: Conditional Approval.

Janet Harbin gave a brief description of the project, noting all lots would be in conformance with the Zoning Ordinance and said the size of the lots was slightly amended from what the Commissioners had in the packets. The applicant provided a new Map which was received this evening, which reflected an adjustment made in order to ensure there was sufficient square footage on each lot once the access easement was taken out of the lot for Parcels B and C. There will be a shared access way from Western Drive to Parcels B and C on the property. Parcel A will have its own separate driveway from Western Drive. There are several residential structures on the lot that were built in the past.

She noted historical analysis was done for the project because the three lots were only part of the former resort area called Kozy Kove, and residential units were built on the remaining lots of the former Kozy Kove. The zoning for the lots was SFR2, Very Low Density Single Family Residential District, and the proposal is for a minor subdivision of 3 lots; a major subdivision would be 5 lots.

She noted the applicant wishes to make a presentation, the Commission has received several emails and letters from residents in the area, an Initial Study and Mitigated Negative Declaration was done for the project and a mitigation monitoring reporting program and there would be no significant impacts remaining based on the subdivision of the property.

She said the Bay Area Conservation and Development Commission also reviewed the proposal and determined the high tide line and buildable areas on Parcels B and C, which were closest to the water. The applicant was amenable to additional provisions, such as a possible view corridor through the property which will be provided by removing the solid wooden fence around the property and installing open metal fencing which would enable view into the property and down to the shoreline. In addition, between Parcels B and C there would also be a pedestrian access for Parcel A to the shoreline, and all easements and access ways will be recorded on the Parcel Map.

**Commissioner Harris** said currently, there was a private access and utility easement to access Parcels B and C. There is language in the Subdivision Ordinance that relates to both easements and private streets, and he asked for staff to explain the difference between the two and how it would relate to the project. Ms. Harbin said a private street is provided for a regular subdivision of 5 lots or more under the Subdivision Map Act. For less than 5 lots, access way easements are allowed, which is the same width of a private street, but it does not allow parking on the sides, is paved with an all-weather surface, and there must be enough width and turn-around for access by fire department vehicles.

**Commissioner Harris** questioned if an easement that is intended to provide access to Parcels B and C be developed as a private street in accordance with Section 15.08.516 if with a waiver of direct street access is granted as shown in the Ordinance under Section 15.08.410. Ms. Harbin said it could be designated as a private street and there would need to be sufficient signage and the private street would need to be named.

**Commissioner Harris** said there was a letter received regarding direct street access and lot frontage, and there was a specific section in the ordinance 15.08.410 that talks about a waiver of direct street access and he asked if granted, would it eliminate the requirement that the lots have frontage onto a street. Ms. Harbin said she would need to determine this from the City's Engineer, and it was possible that the applicant's engineer could address this issue.

**Chair Finlay** said questions have been raised in Mr. Knox's document and requested a synopsis of the City Attorney's response.

Assistant City Attorney Mary Renfro said there was a letter submitted by John Knox to the Planning Commission two days ago that addresses a number of issues. The primary three issues were: 1) frontage--the map has a Lot A, which fronts on Western Drive and Lots B and C which are accessed by an easement and the question is whether Lots B and C meet the frontage requirements of the subdivision ordinance that states all lots shall have frontage on a street; 2) whether or not the applicant is required to provide reasonable public access to the beach; and 3) if the easement were aligned as shown on the original plans submitted, would Lot A have the requisite 6,000 square feet. New plans were submitted today changing the alignment of the easement and Lot A, and in terms of the net square footage analysis, the new map works.

Regarding frontage, on July 6, the applicant's attorney, Mr. Manly, submitted a memorandum indicating that his analysis of the City's subdivision ordinance saying that as shown the public access easement satisfies the frontage requirement and in her opinion, the arguments put forth are legally supportable and she does not see a continuing issue on the frontage question. Regarding whether or not the subdivision is required to provide reasonable public access to the beach, Section 15.08.160 indicates that it is for the Planning Commission to decide whether the

size of the subdivision and the proximity to a public beach and other factors would require the applicant to provide beach access.

**Chair Finlay** said when she and Ms. Renfro spoke, there was a discussion regarding the historical aspects about how the City handled other properties in the same way, and Ms. Renfro said the issue has not yet been resolved. She felt Mr. Manly's analysis would be legally supportable, but if this were brought to a judge, the judge would ask, is this the way the City has itself historically interpreted its ordinance, and she cannot answer that question. The City Engineer, Rich Davidson, who may be able to make that determination was on vacation, or former Principal Planner Judith Battle who resides out of state.

Ms. Harbin said no public access was required for some of the other subdivisions along the shore frontage at the time they were subdivided because it was determined there was reasonable public access from parks and also from Keller Park.

**Chair Finlay** questioned the frontage issue and flag lots and said flag lots were typically in subdivisions that are PUD's or PAD's, which were different from the current proposal. Ms. Harbin said staff found an older file where the City had allowed a division like this and considered there was sufficient frontage because of an access easement from the roadway to each parcel. Also, in the Subdivision Map Act, there is a provision that states, just because public access is not required on a parcel or property does not mean that it should be disallowed.

Jonathan Livingston, said about two years ago John Woolley and Paige Poulos asked him to look at various ways to re-distribute the potential of the large parcel, they entertained many concepts, and with the help of Planning staff, the refinement of concepts is being presented in the form of a Parcel Map. The proposal does not require any variances, nor is the subdivision in violation of any zoning or subdivision map ordinances and asked for the Commission's approval of the item.

Whit Manly, Attorney with Remy, Thomas, Moose and Manly, supported staff's analysis, agreed with Ms. Renfro's interpretation of the Subdivision Ordinance and his memorandum as being a legally supportable position, said one of the themes of neighbors was that they believe Ms. Poulos is attempting to get credit for the non-conforming uses there, and this was not true. He said there are non-conforming uses on the site, but they did not attempt to claim credit for them in some fashion. Another re-occurring theme is a concern that somehow the project would result in enormous density that is out of character with the neighborhood, which is not consistent. He said the neighborhood is comprised of varying square footages and the average home is about 6,000 square feet. If the application is approved, it will result in 3 single-family dwellings on 3 lots, which together are about 24,500 square feet, which was absolutely in character with the neighborhood. Regarding density of the people that would be brought to the site, the average household for Richmond is 3.3 people, which for the proposal would total 10 people, which is not massive density and it similar to what is already in the neighborhood. They recognize some neighbors support the project and others do not, but he felt the application was fairly straight forward, they are not seeking a variance, rezoning and only an application of objective principles. In addition, there is an issue that the Planning Commission may exercise in its discretion, which is Section 15.08.160 which allows consideration of beach access; however, he advocated not requiring it for the following reasons; 1) the proposal is a very small subdivision; 2) historically the site has not provided beach access; 3) there are no public facilities at the beach; 4) public access would result in trespass on adjacent properties that also front on the beach; 5) there is inadequate parking along Western Drive; 6) this is a sensitive beach environment and they do not want to create a people-intensive corridor. The beach has low

usage and if their map is approved, it would continue in this fashion; and 7) public access is provided very close-by. Mr. Manly said there has been a suggestion that the City should impose conditions on what the buildings can look like and he noted there will be a time when this is done. There are restrictions imposed already from the zoning ordinance such as setbacks, height limits, and a design review and use permit requirement which will empower the City to consider views.

Paige Poulos, said she and her husband very carefully looked at what would be appropriate development for the site, they intend to live on the site in one of the parcels, feel that the development was very sensitive to the site, they have good neighbors some of who support and oppose the project, and said they were very sensitive and respectful of concerns of maximum lots size, heights and the beach. She felt their proposal would keep the large area from being developed with a large mansion, which was not what was wanted in the neighborhood.

**Chair Finlay** discussed speaker rules, acknowledged the procedure was inadvertently not followed, and said opponents would have the same opportunity as did the previous 3 speakers.

**Chair Finlay** recognized Councilmember John Marquez in the audience.

#### Public Comments:

##### *Proponents:*

Travis Arnesen, read letters from friends living near Kozy Kove; 1) Jonathan Sweat, expressing his strong support of the subdivision, was opposed to massive home development and felt the small subdivision was in keeping within the character of the neighborhood and was opposed to the requirement for providing beach access; 2) Ann Jensen, expressing her support of the proposal.

Christina Zirker, welcomed and support the proposal, said the buildings currently on the property have been in disrepair for decades, the proposal brings the property into harmony with the size of surrounding lots, the lots will have an aesthetically pleasing relationship with the bay front, felt there was sufficient public access to the beach from Keller Beach, Miller-Knox Park, or through the parks that lead to the water, and the proposal asks for no zoning variances and falls entirely within planning guidelines.

Wayne P. Tarr, supported the proposal, said he has been in Kozy Kove for 11 years, loves the people in the community, voiced concerns of the opposition because he felt the project was outstanding.

Elizabeth Tarr, supported the proposal and its owners, felt the real treasure were all of her neighbors, said neighbors were very patient with their messy remodel job, they have learned nothing but goodwill, said she was shocked by the angry response and objections of some neighbors and felt the owners have a right to subdivide the property.

Suzie Grubler, echoed comments regarding nearby beach access, said there were 5 rundown rental units on the property and she questioned why neighbors would oppose the replacement of three tasteful homes.

**Chair Finlay** disclosed that she met on two occasions with the developers of the property.

Martin McNair, said he was an Orinda developer, had a 10-acre parcel which would have allowed him to build 20 houses and had opposition from people for a 6-lot subdivision. He noted there was a competitive bid which the owners won and he felt what was proposed was within the guidelines, felt the applicant was entitled to make a profit and build, and asked the Commission to vote on the many merits of the proposal.

Grace Bodle, felt the plan was a good one because it will allow 3 modest residences consistent with the style of the neighborhood which would replace 5 substandard units. She said the owners restored two properties in Berkeley which were fabulous and asked for approval of the proposal.

Jim Dewitt, felt the area was a ghetto and should not stay that way forever, was pleased with the plans which will enhance the neighborhood and he asked for approval of the proposal.

Robert Lane, felt the current units were slums and a public nuisance, felt the proposal was well-thought out, well-executed to not be a burden on contiguous neighbors, and felt if Mr. Livingston remains part of the development team, he had no doubt that the as-built end result will enhance the market value of the entire neighborhood, felt any restrictions may be considered in the future in designing the homes, felt owners behind the lots would continue to enjoy their view of the bay through some reasonable deed restrictions, and suggested the City have a view ordinance in place similar to Oakland's.

Janis McNair, supported the proposal and urged the Commission to approve it.

#### *Opponents:*

John Knox, said he was representing 56 homes in the immediate Kozy Kove neighborhood of their opposition and wanted to identify several serious legal and policy related flaws in the proposal. Many people are away on vacation, a petition has been received along with written comments of concerns, and urged the commission to deny the application or at least continue it to a later meeting to fully allow for public comment of issues. There were also several practical and policy reasons for denying the proposed subdivision, and summarized the flaws as follows: 1) the subdivision does not comply with the Municipal Code's lot design which requires each lot to have street frontage; proposed access easement over Parcel A, while providing legal access to Parcels B and C does not confer a street frontage on Parcels B and C as required by the Code; 2) the Planning Department in recommendation 4 of the report confirms that the proposed 3-lot subdivision would not be in conformance with the existing lotting plan of the plan; 3) the subdivision does not comply with the requirements for minimum lot area with respect to Parcel A. The proposed map counts the square footage of the access easement for Parcels B and C toward the total square footage of Parcel A and the Code clearly requires that the area of the access easement be excluded in this calculation. Without this additional area, Parcel A falls far short of the minimum 6,000 square foot area requirement; 4) the application and staff analysis ignores the independent requirement of the Municipal Code found in two separate sections to provide maximum, feasible access to the shoreline through the subdivision. The staff analysis rests entirely on the statement from the BCDC staff that they will not require such access. As on the principal authors of legislation creating the BCDC, he said the legislation was never intended to limit the City's ability to provide for, or require public shoreline access even if it is not required by BCDC's legal authority. The City should take the requirement seriously and study the possibility of shoreline access before rushing to a judgment that it is not required, feasible or desirable, which has thus far not happened; 5) the analysis of the project contained in the CEQA documents prepared by the City is seriously flawed and not sufficient under CEQA.

CEQA requires all reasonably foreseeable environmental impacts be studied, evaluated and mitigated or that a finding of overriding considerations be made for impacts not mitigated prior to approval of the project. He felt the documents fell short, they fail to look at the maximum permissible vertical development of three proposed parcels under the zoning code in terms of building envelopes, heights, number of structures, views and other impacts and fail to analyze the impacts such development might create, but instead assumes that the applicant's non-binding statements about their intent to develop the property in a particular way are accurate. The CEQA documents rely on the later conditional use permit and design review processes to regulate any of the issues and moreover, they make the claim that the subdivision of a single lot into three lots will actually reduce the density on the site, which is not supported when currently there is only 3,000 square feet of total building space on the site in single story structures. With 3 modern multi-story homes and garages or accessory structure, there will likely be a significant amount of square footage if the plan is approved. The failure to look at the maximum permitted vertical development, coupled with the lack of any proposed conditions limiting that development in terms of aesthetics, building envelopes, height limits or number of structures results in the phenomenon known as "piece-mealing"; breaking up the CEQA analysis into small components over time such that the entire project is truly never studied as a whole. The City cannot approve the subdivision without a clearly delineated vertical development plan for the lots unless it is willing to study and mitigate the full development potential under the current zoning ordinance, which means 35 foot high buildings, maximum building envelopes and maximum lot coverage, including accessory structures, and this has not been done; 6) In addition to contradicting the City's own Municipal Code, the failure to study the possibility of shoreline access through the parcel in light of the strong bias of the code to provide such access either is part of the subdivision process or part of the conditional use process when houses are proposed for the site, is a violation of CEQA. Without having made any findings or seriously studying the issue, it is not reasonable to foresee that shoreline access may be granted is indefensible. The City cannot and should not advocate its responsibility on this point to BCDC alone; 7) regarding the Commission's role of good planning in Richmond and preserving neighborhoods and heritage of the City, Kozy Kove has been used by many people over the years for recreation and has an aesthetic backdrop to the neighborhood. He felt Kozy Kove was a special place and the great fear is that it will end up as three large, multi-story homes with appurtenant structures crammed into narrow lots which will permanently mar the beauty and tranquility of the unique cove on the Bay and turn it into something more commonly seen on the beaches of Los Angeles. While the applicant has made oral assurances that she would not let that happen, they are concerned about the lack of enforceable controls and the fact there can be no assurance that the applicant will even continue to own the property. Offers of "deed restrictions" among the lot owners do not allay these fears because such restrictions can only be enforced and can be freely amended by the lot owners themselves. He felt the Planning Commission must set reasonable controls, make sure all impacts are fully studied and mitigated and ensure compliance with the Code. While we hope responsible development occurs, the application as it currently stands is deficient in all three areas, and he implored the Commission to reject it.

**Commissioner Rao** questioned if Mr. Knox's main reason for requiring the access to the beach was because it would break the rules of CEQA. Mr. Knox said CEQA does require a public beach have access, but it is not necessarily a matter of law and could not directly answer the question.

**Commissioner Rao** asked if Mr. Knox sees people using a path for going to the beach currently for kayaking, and Mr. Knox said he cannot carry the boat down, but he cannot say he has observed people using a path for access to the beach for kayaking.

**Commissioner Harris** said just before the meeting, the Commission was provided a revised map of the proposal and he confirmed that Mr. Knox did not receive it. **Commissioner Harris** said one of the issues that has arisen with the revised map is the minimum lot issue which was valid regarding Parcel A, which has been allayed, as well as some other issues.

Patricia Herron, said she has lived in the area since 1957 and two houses away from the proposal, said the Commission did not receive a copy of an exhibit which she presented. She said on July 19 the document was delivered to the Planning Department along with copies of the signed petitions, and she asked that they be submitted into the record, said all lots in red were representative of petitioners opposed to the proposal, said she was a lawyer and judge in the County and she did not believe the issues have been addressed.

Jean Knox, said all supporters have referred to the beautiful plans for the property, but those plans exist only in the minds of those people and do not exist as part of this proposal. She felt the proposal was only for a 3 lot split and not for 3 residences of modest size that fit nicely on the site and felt the Commissioner should be asked to judge this issue if CEQA is to be valid, and if not the Commission should be asked to judge it on the basis of what could happen there under the present SFR2 zoning regulations. If adopted, it will irrevocably eliminate the challenges that can come under Resource Overlay Management and the CUP.

George Coles, said he has lived directly across the street from the parcel for many years, said they are dealing with the beauty of the neighborhood and one of the most beautiful parcels of land that still remains close to the bay and said his family members would continue on inheriting his property, who will most likely live there. He acknowledged his home was ugly but is still there, and he hoped for careful planning of new homes on the lots.

Michael Chartock, has lived above the proposed property for 18 years and enjoys the area, felt what would be proposed in the future would be 3 mansions and not 1, said there were no restrictions on the proposal, felt there were inadequate conditions and poor development planning in approving the 3 lot subdivision, felt 2 lots would be far better which would result in less overall density and requested the Commission exercise sound planning judgment and evaluate the issue further.

Nancy Foss, said she resides next door to the proposal, said she is one of 76 neighbors who strongly oppose the subdivision of the parcel, the objections center around several important issues which would affect the entire neighborhood; 1) breach of subdivision zoning codes relating to lot size, lot street frontage, required beach access, and a change in Parcel A and 2) density; one third of the area is covered by sand and water or unbuildable land, lots would be tight with included access easements, driveways, and parking and no restrictions regarding square footage, height, envelopes, parking and garages. She asked the Commission to reject the proposal.

Richard Katz, said the proposed subdivision does not share access to the beach and read the entire Code into the record, which in part states that the Commission shall not approve either the tentative or final map of any subdivision fronting upon the coastal shoreline if the subdivision does not provide to have available reasonable public access. He felt the map was defective and the applicants attempt to cure the defect by saying to neighbors that the access to the beach is provided by Keller Park and other areas. He said there was no access except at low tide, with slippery rocks at about 5:30 a.m. typically and rises by 8:00 a.m., and asked the Commission to uphold the Municipal Code.

Roger Craine, said he lives one block from the proposal, said he also owned a home above the proposed development, said most people who spoke in opposition were located very close to the property and those in favor were far away from the development. He felt comments were not so important unless the project requires a variance. If frontage is not allowed, a variance would need to be granted of which 56 close neighbors would oppose.

Martha Bielowski, said the vote of the Pt. Richmond Neighborhood Council was one of support but took only one half hour, said there were very few people in attendance from the neighborhood, and she asked the Commission to compare and take into account the significant material and opposition presented tonight with the sparsely attended and short meeting of the neighborhood council.

Kate Lord, spoke in opposition, said she did not see how the subdivision could be approved tonight when a new subdivision map has been received and not seen by many, said she was very concerned about density, felt an additional 10 cars would affect traffic, especially since the tunnel was closed from Miller Knox through Western Drive and up Washington out of the Point.

Paul Murphy, said he is totally for the applicant to build whatever they propose on the property, but was totally against splitting the property into 3 or even 2 lots. He said he bought two homes that look down on the property, there is a huge slough through the middle of the property with significant water rushing out to the Bay and he hoped the drainage system is properly reviewed.

Margo Peters, lives across the street from Keller Beach, felt it was worth planning for the entire bay area as there was precious beach land left on the Bay, did not think there was any excuse for littering the coastline with more houses.

Pamela Hyland, said she looks directly down on the project, felt the Woolley's would be good neighbors when they get a reasonable plan, but she felt it was not fair to approve new drawings that no one has reviewed, she opposes the separate evaluation and felt the entire project should be reviewed before beginning the process of subdividing it.

Kent Kitchingman, said he worked in the Richmond Planning Department for four years and felt concerns were valid, felt there was uncertainty in the process of approving a subdivision map without actually knowing what would be there and he felt when there is a zoning change or subdivision map, the worst case should be considered. The applicant's statements may or may not be what is proposed in the future, and felt the red flag was the actual cost of the property and what would be built on it in order to receive a return on investment.

## **BREAK**

**Chair Finlay** called for a 3-minute break and thereafter reconvened the regular meeting.

### *Rebuttal - Applicants*

Whit Manly, felt the relevant analysis for the Commission was whether or not the subdivision complied with the Subdivision and Zoning Ordinance and felt they could not get into the subjective notions about what patterns might be formed on the property. Regarding the City piece-mealing its environmental analysis, he disagreed and said it would be piece-mealing if the negative declaration had focused on a project that nearly involved a subdivision and did not contemplate the ultimate construction of houses, but that is not what it did; it analyzed the impacts of subdividing, creating 3 parcels and building 3 houses on the site. He said the

recurring them of concern was a lack of control for what buildings might be built on the site, which is not true. The RMC requires design review and a use permit for each building permit and it will come before the City in a public process at which time under the RMC, views are expressly required to be considered. And this is the reasonably foreseeable project. Regarding public access, the Code expressly provides the Commission with authority to not require public access if there is public access nearby. Regarding parking, staff has analyzed parking utilizing standard trip generation rates and cars associated with the project will be 12 additional trips per day or one per hour and not a traffic impact. Regarding the change in the Map, the only change in the map submitted was one line shifting slightly to increase the square footage of Parcel A to make sure it meets the 6,000 square foot minimum once the easement is backed out.

### *Rebuttal – Opponents*

Jean Knox, said under CEQA, the reports given were insufficient because they are not based on reasonably foreseeable development under SFR2, or based on specific plans for vertical, three-dimensional plans that will show what will actually occur on the property as opposed to what might be. Of particular concern is the applicants' public statements to the effect when asked about the need for controls on the map where they have said they do not want to dictate what other people do with their property. She strongly recommended the Commission approve Alternative 4 on page 2 in the staff report, directing the Planning Department return with a tentative parcel map for 2 parcels which could meet all of the size and zoning regulations, street frontage and would have a much better chance of being a fit for the RMC and CUP.

Janet Harbin noted the staff report incorporates consideration for approval for a Tentative Parcel Map of 3 lots with an accompanying Mitigated Negative Declaration and Mitigation and Monitoring Reporting program in the Point Richmond area.

She said staff has presented three different recommendations for the project;

- 1) Direct staff to prepare a resolution to approve the Mitigated Negative Declaration with the accompanying Mitigation and Monitoring Reporting program, finding that the project will not create significant environmental effects with incorporations of the recommended mitigation measures or as mitigations measure as conditions of approval, and reflecting the independent judgment of the Planning Commission;
- 2) To direct staff to prepare a Resolution approving TPM 1103631 to parcelize APN 558-020-007 into 3 separate single-family residential lots as shown in Exhibit A, as modified by the Map received tonight;
- 3) Direct staff to prepare a resolution approving TMP 1103631 to parcelize APN 558-020-007 into 2 lots with frontages on the bay side and Western Drive reflecting the existing lot patterns of the neighborhood, or direct staff to prepare a resolution to deny TPM 1103631.

She said at the DRC meeting on Monday night, staff was also asked to prepare findings and prepare a resolution in order to approve the project, and before the Planning Commission was a resolution of the Planning Commission approving TMP 1103631 for Kozy Kove to divide a 24,479 square foot parcel into 3 single family residential lots at 125-127 Western Avenue, Point Richmond, and within this resolution are findings that need to be made according to the Subdivision Map Act and the City's Subdivision ordinance and also conditions of approval as recommended by the City Engineer and staff for the project.

**Commissioner Harris** said he felt the item would be a simple matter this evening, felt that Parcel A was clearly substandard, but at 6:55 p.m., Commissioners were given a new Map where the parcel does seem to provide for 3 legal lots. He said as to whether they are build able is something the developer and architect will have to settle. However, to address arguments as to why the project should have been rejected, the first was the substandard lot size of Lot A.

He said in the plan included in the packet, when one discounts the easement, the lot is approximately 4,700 to 4,800 square feet and is substandard. What was provided this evening just meets the 6,000 square foot requirement, which he felt needed to be verified. Regarding the issue of lot frontage, he sent out an e-mail to staff earlier today which he hoped would have been clearly addressed this evening.

**Commissioner Harris** read Section 15.08.410 of the Subdivision ordinance, Number 2, which talks about a waiver of direct street access that the Public Works Department can ask of the developer so that the lots do not require direct frontage on the street. He said assuming the waiver is granted, Parcels B and C access via the easement and would appear to be adequate.

Regarding items within the Mitigated Negative Declaration and the Mitigation and Monitoring Reporting Program, there are issues he had questions about. On page 8 of the Initial Study, the statement of Aesthetics and items listed as to whether the project will have substantial adverse affect on the scenic vista and whether the project create substantial glare which would adversely affect day and nighttime views in the area. These were written off as no impact, which he felt was not the case because there is no development plan for the homes. Once those are presented, it may possibly be no impact, but now on speculation it may be less than significant with mitigation or less significant with an impact.

Regarding Air Quality, Section 3, Item E; Will the project create objectionable odors affecting a substantial numbers of people, he felt that during construction, issues do come up. As written off as a non-impact, this may be considered otherwise.

One concern of his that is not developed in the Map and is not incorporated is the Utility Plan. One of the items of particular concern is the fact that unless force mains are provided from the homes up to Western Drive, they will need to tie into the beach sewer interceptor, this may provide some issues regarding biological resources under 4A and 4B and now those issues regarding the sewer should be included as part of the Parcel Map. He felt these items needed to be addressed within the Initial Study.

Regarding the project not creating access to the public shoreline as referenced in the Subdivision Ordinance, as people who have access to the ordinance, one paragraph is referenced--Section 15.08.160; Shoreline Access considerations, and he read Item 1. He then read Item 4, which related to the Planning Commission making findings for access within a reasonable distance from the subdivision. He said one speaker referenced that if you do not use access through Kozy Kove in order to get to the beach, you could access it from Keller's Beach at low tide. However, there are other points through public easements to get to the beach and make access to the entire shoreline, and he questioned if this was reasonable public access.

Regarding "The proposed subdivision will degrade the shoreline with an overly dense development", he felt this was speculative. There is a 24,000 square foot lot right now and when you look at the Parcel Map from the area, there are numerous homes that barely meet the 6,000

standard within the area that front the shoreline. It seems a sensitive issue that what the developer proposes does conform in terms of the lot division only.

As for the Parcel Map itself, one of the issues noted in the Subdivision ordinance under Section 15.08.255 regarding the content of a Parcel Map is that it appears to require a description, among other things, of the utilities required as part of the subdivision, and **Commissioner Harris** said he was concerned how these would be laid out and tied into the existing utilities along Western Drive to get to the shoreline. So, what the Commission has is a start, he felt the layout can be made to conform, but as it currently stood with the Initial Study and with the lack of detail that is provided within the Tentative Parcel Map, he said he did not feel comfortable making a request for approval at this time.

**Commissioner Rao** said he did not like receiving the Parcel Map at the last minute and asking the Planning Commission to make a decision. He suggested the applicant go back to the neighborhood council and discuss the matter again. Also, he said his heart says there should be public access to the beach.

**Chair Finlay** asked if it was the decision of this Commission to continue the hearing and confirmed with staff that the next regular meeting was August 2, 2007, but that a special meeting could also be called.

**Chair Finlay** questioned if staff was clear on the areas of concern to Commissioner Harris so that the applicant can meet with Public Works, resolve the sewer and map issues and return so the Planning Commission feels confident in its decision. She questioned if there was enough time and after hearing those comments that staff understood what was being requested. Ms. Harbin said staff understood what was being requested and that some of the information may also be included in the conditions of approval in the resolution.

**Chair Finlay** said her problem with the resolution was that she could not adopt a resolution that she has not yet reviewed. So, it sounds like some of the issues have been resolved, but until the Commission has had time to look at items such as the net usable square footage on the parcel map, she believed the Commission has looked at what is reasonable in terms of access, and regarding easement, it appears the Commission has responsibly answered that question. So, she felt the Commission was close to making a decision, but was not yet there.

She felt if the Commission starts allowing public access through the lot, it will have created a public nuisance and she felt this would be fraught with difficulty. She felt Commissioner Harris, staff and the proponents and opponents could resolve outstanding issues in the meantime prior to the August 2, 2007 meeting.

**ACTION: It was M/S (Harris/Rao) to continue EID/TPM 1103631 to August 2nd with the hope that the comments put forth by Commissioner Harris will have been addressed; unanimously approved.**

**Chair Finlay** said at the August 2<sup>nd</sup> meeting, the Commission will only listen and address issues relating to what was outstanding and she thanked everyone for their participation on the matter.

## **COMMISSION BUSINESS**

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

Richard Mitchell asked if Chair Finlay could poll Commissions on their attendance to the APA Conference in San Jose.

City Attorney Mary Renfro discussed the progress regarding the Council's discussion and decision to merge the functions of the Design Review Board with the Planning Commission, stating she was working with a consultant on procedures, she would seek guidance through the Mayor's Office, staff should soon have a draft for review, the matter will go to the Council by October and may bring it to them as a draft in September.

**Chair Finlay** asked if the draft could be reviewed by the Planning Commission, and Ms. Renfro said there is no provision against bringing it to the Planning Commission for a recommendation, and agreed to work with staff on scheduling the matter.

**Commissioner Rao** said in the last meeting, as Chair of the nominating committee, he announced the nominating committee's recommended slate.

**ACTION: It was M/S (Rao/Harris) to approve the slate of officers as presented and as follows: Chair Finlay, Vice Chair Rao and Secretary Lee; unanimously approved.**

**Commissioner Williams** asked to adjourn the meeting in memory of Deputy Marshal Ron Wiley, who recently passed.

**Commissioner Harris** asked if during the Chair's report, Chair Finlay could comment on the Richmond Coordinating Council meeting she attended last Monday.

**Chair Finlay** thanked Commissioners for their work of the nominating committee, thanked Ms. Renfro for addressing questions posed by the Planning Commission, announced that the California Chapter of the Association of Planners was holding a conference in San Jose from September 30-October 3, noted the deadline for registration was July 31<sup>st</sup> and more information was forthcoming.

**Chair Finlay** questioned if the ordinance regarding communication equipment on residential properties had been identified as a priority item for the Planning Commission. Ms. Renfro said there was a specific problem in the Point and in response the Mayor's office suggested it be brought forward. She agreed the matter should move forward, but did not currently know the status. **Chair Finlay** felt it should be routed first through the Planning Commission and requested staff follow-up.

**Chair Finlay** said that she, along with Councilmember Viramontes and Butt, were asked to speak at the Richmond Coordinating Council. Each was allowed to provide a 5-minute presentation on what they felt were the attributes and negatives regarding the merging of Design Review Board and Planning Commission. They took questions from the audience, gave a summation, and at the end of the meeting, no vote was taken, although the RCC indicated they would take their information under submission and return with some type of position.

**Chair Finlay** said no firm recommendation was forthcoming at present, felt it was fair to characterize the positions of Councilmember Viramontes being in favor of the merger, Councilmember Butt felt it was not being done timely and more thought should go to it, and that Chair Finlay's position was one of vehement opposition to the merger.

**Chair Finlay** thanked Commissioner Winston who served an 8 year term, thanked Commissioners Harris and Williams for staying on the Commission, and thanked Commissioners Rao and Lee for their continued service, as well as staff.

### **Adjournment**

The meeting was adjourned at 10:00 p.m. in memory of Deputy Marshal Ron Wiley of the Richmond Fire Department.

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