

**PLANNING COMMISSION MEETING**  
**COUNCIL CHAMBERS, RICHMOND CITY HALL**  
1401 Marina Way South, Richmond, CA  
November 1, 2007  
7:00 p.m.

**COMMISSION MEMBERS**

Virginia Finlay, Chair  
Zachary Harris  
Jeff Lee, Secretary  
Vacant

Vice Chair Nagarajo Rao  
Stephen A. Williams  
Vacant

The meeting was called to order by **Chair Finlay** at 7:03 p.m.

**Chair Finlay** led in the Pledge of Allegiance.

**ROLL CALL**

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

**Absent:** None

**INTRODUCTIONS**

**Staff Present:** Janet Harbin, Hector Rojas, Carlos Privat and Richard Mitchell

**MINUTES** – None

**Chair Finlay** provided an overview of the Consent Calendar, meeting procedures for speaker registration and public hearing functions and procedures. She said certain items approved by the Commission may be appealed in writing to the City Clerk by Monday, November 12, 2007, by 5:00 p.m. and announced the appeal process after each affected item.

**CONSENT CALENDAR**

**Secretary Lee** said the Consent Calendar consisted of Items 4, 5, 6 and 7. Ms. Harbin referred to Item 7 and said revised findings have been presented to the Commission and she read the revisions into the record. **Chair Finlay** requested Item 3 be moved to the Consent Calendar and confirmed with Ms. Harbin the same finding should be applied for the item in its consistency with the General Plan.

<b>ACTION: It was M/S (Harris/Rao) to add Item 3 to the Consent Calendar; unanimously approved.</b>
---

**Chair Finlay** noted the Consent Calendar therefore consisted of Items 3, 4, 5, 6 and 7.

<b>ACTION: It was M/S (Williams/Rao) to adopt the Consent Calendar consisting of Items 3, 4, 5, 6 and 7; with amendment to Items 3 and 7; unanimously approved.</b>
---

### **Items Approved:**

- 3. ST 1103412 – Street Vacation for Joy Avenue between Factory Street and Essex Avenue** - PUBLIC HEARING to consider a request to vacate and abandon for public purposes Joy Avenue between Factory Street and Essex Avenue (adjacent to APNs: 561-130-014, 007, 010). M-2 (Light Industrial) Zoning District. City of Richmond, owner; American Standard Properties, applicant. Tentative Recommendation: Recommend Conditional Approval to City Council.
- 4. TM/EID 02-07 – Tentative Map Time Extension for Parkway Commerce Center at Collins Avenue near John Avenue** - PUBLIC HEARING to consider the applicant's request for a Tentative Map time extension at Collins Avenue near John Avenue. (APNs: 408-060-014 and 408-060-016). Light Industrial District. Panattoni Development, owner/applicant. Tentative Recommendation: Conditional Approval.
- 5. MS 1104232 – Minor Subdivision at 2750 Cutting Boulevard** - PUBLIC HEARING to consider a request for approval of a minor subdivision at 2750 Cutting Boulevard (APN: 549-150-008). MFR-1 Multi-Family and SFR-3 Single-Family Residential Districts. Carl Adams, owner/applicant. Tentative Recommendation: Conditional Approval.
- 6. CU/MS 1104393 (MS 758-07) – Minor Subdivision at 1336 & 1338 Mallard Drive** - PUBLIC HEARING to consider a proposal for a two lot planned residential group and conditional use permit subdivision of a 6,950+ Square Feet parcel at 1336 & 1338 Mallard Drive (APN: 560-410-075). MFR-2, Multifamily Residential District. Carol Meier, owner/applicant. Tentative Recommendation: Hold Over to 12/6/2007.
- 7. ST 1103973 – Street Vacation for a portion of an alley near the northeast intersection of Hoffman Boulevard and South 8<sup>th</sup> Street** - PUBLIC HEARING to consider a request to vacate a portion of an alley located near the northeast intersection of Hoffman Boulevard and South 8<sup>th</sup> Street (adjacent to APNs: 550-272-019, -025, -004, and -017). Highway Commercial District. City of Richmond, owner; Todd Lewis, applicant. Tentative Recommendation: Adopt Resolution 07-17.

### **Brown Act – Public Forum**

Tanya Boyce said she has recently come to the Board questioning some of the decisions and recommendations of staff because she believes in justice, democracy, feels the process is participatory and requires people to come forward with comments. She acknowledged that she does not know everything and when she is wrong she welcomes corrections and does not want to offend anyone and hoped everyone is as equally open.

Daniel Donahue asked and urged the Commission to keep intact the spirit and the purpose of Richmond's hillside ordinance, carefully and wisely realize the true potential of Richmond's most treasured asset. He asked the Commission not to be swayed or influenced by developers, asked to think hard in approving any development on the hills and questioned who would truly benefit and thanked the Commission for their service to the community.

Herk Schusteff said in 2000 voters appointed President Bush and asked everyone to look at where his office has taken the people. He said the hillside ordinance is an important part of the

General Plan which is the constitution for future development and presented Plato's story of shadows and beliefs.

Jerome Smith spoke how valuable the Commission is to the community, said their interest lies with the Commission in planning for the city's hillsides, and asked the Commission to evaluate hillside development as threats to the shoreline. He discussed similar projects being approved without conditions being placed on them first and asked the Commission to disregard that precedence.

Mary DeBenedictis recited the purpose of the hillside ordinance, the definition of development, negative impacts if processes are not properly followed, irreversible harm to the hillsides, and presented signed petitions from Richmond and El Sobrante residents requesting strictly upholding the regulations of the hillside ordinance.

Susan Swift, said she was speaking as an El Sobrante Municipal Advisory Council member and as an individual, voiced concern of enforcement of the hillside ordinance, discussed the hillside physical restraint regulations and purpose of the ordinance, said decisions to develop any parcel is irreversible, voiced concerns of environmental degradation from development and read a section of the General Plan regarding geotechnical conditions, landslides, liquefaction and earthquakes.

John Luckett said he was disturbed that Canyon Oaks II project is being pushed through very hastily, noted the occurrence of a 5.6 magnitude earthquake and felt the hillsides would be coming down quickly, voiced concerns over erosion, muddy water rolling into homes, fire risk of homes in hillside development, and felt the project had too many negatives.

Deborah Plaza said she lived three homes from the proposed entrance to Canyon Oaks II, questioned why the project is being proposed when the City had a hillside ordinance, said people who are not aware of the development are appalled, said her quality of life would significantly change from additional traffic, construction, noise, congestion, safety risks, and environmental damage.

### **Items Discussed:**

- 1. Outdoor Vending Ordinance Amendment - PUBLIC HEARING** for an Ordinance Amendment for changes to City's existing Outdoor Vendor Ordinance - Article 15.04.700 of the Richmond Municipal Code.

Hector Rojas gave a PowerPoint presentation of an outdoor vendor ordinance, said the Planning Commission first discussed the matter on April 12, 2006 at a retreat, which was felt to be a matter of proliferation and staff was directed to prepare strategies for resolving the issue. A study session was scheduled for March 2007; however a quorum was not able to be met and this is staff's second attempt to review the subject.

Mr. Rojas said there is a Merchant's Association on 23<sup>rd</sup> Street that also had input through the General Plan process, staff held several workshops with many of the vendors, a pre-meeting the night prior from 6:00 to 9:30 p.m. with Spanish-speaking vendors and he hand-delivered notices to all vendors, as well.

Staff is requesting three directives from the Commission; 1) for the Commission to provide direction to staff regarding what the issue currently is with the existing ordinance relating to

mobile vendors and select one of staff's recommended strategies identified in the staff report; 2) to review and address private property-based vendors and street-based mobile vendors; and 3) direct staff on a policy with respect to outdoor vendors use permit renewals. Currently, vendors are approved to operate for two-year terms and staff is questioning whether the Commission wishes to renew them every six months, one year or two years.

He discussed the private property based vendors, stating some sell food and some do not. They operate along sidewalks and curbsides, the ordinance was created originally as a program for temporary business incubation, staff questions whether the Commission feels the program is still one of incubation or seen as a business that could be permanent with or without renewal of use permits. The current ordinance allows the operation of the uses in commercial, industrial, public districts and most others not residential districts. The basis for their approval is temporary, the current ordinance does not stipulate the number of times the permit can be renewed, business licensing and health permits are required, vehicle registration, insurance and police identification is required, and uses are only allowed within 300 feet of one another. There are no parking requirements, vendor units must be stored overnight at an offsite location or commissary identified through the permit, the location must be paved and signage is also approved through the CUP process. If vendors operate a night, nighttime lighting is required and they must also provide bathroom facilities within 200 feet of the vending unit for use by employees.

Currently, a total of 17 outdoor vendor CUP's have been granted since 1999, the amount of active vendors total 11 throughout the City, 6 of which were currently operating with a valid CUP and 5 acting with an expired CUP. Those operating with an expired CUP have gone through the re-application process; however, staff has not presented them to the Commission due to not having a policy decision on their renewal timeframes and has placed them on hold.

He presented a summary of the locations of current vendors, their permit history for each address and he said 6 vendors have operated for more than 4 years. One vendor owns 3 businesses in the City and another vendor owns 2 businesses in the City. He said parking has been an issue for vending units on 23<sup>rd</sup> Street who operate on large parcels of land in that no parking stalls are painted on the pavement and during the peak lunchtime hours, approximately 20 cars are parked irregularly and in a staggered way. He noted therefore, staff would like to include parking regulations within the ordinance update. He said not all vending units are mobile restaurants in the City and some operate as flower stands and some sell smoothies and hot dogs.

When staff reviewed the City's ordinance, the intent was for the units to begin operation and over time, transition into a restaurant and there are currently no restrictions on renewing permits. Some additional considerations include how mobile restaurants affect existing and future restaurant operations, there are some restaurants that have indicated there is an element of competition; however, staff has not received complaints from mobile vending units. The Commission can look at whether it wants to re-affirm that these businesses are intended to be transitional in the ordinance, and if so, staff would need to strengthen the wording in the ordinance. If the mobile vendors are looked at like any other business in the City, staff would need to modify the ordinance to include where they are allowed, how many permits can be granted at one time, and other approaches. If the transitional nature is re-affirmed, staff must identify an incubation period, which has not yet been identified. A CUP approval would be an administrative procedure and the Commission would no longer review mobile vending units. Parking is an important issue and staff wants to identify the parking demand and make it a requirement on the business and ensure stalls are painted.

Regarding making the businesses permanent, the Commission can review four strategies; 1) leave the ordinance as is but allow the businesses to continue on an indefinite basis; 2) require that they are no longer allowed in certain zoning districts; 3) prohibiting them from locating on specific key corridors; and 4) keeping them operating as is but amending the ordinance to limit the total number of permits issued.

Regarding street-based vendors, some operate as catering trucks that provide lunch and move onto another site throughout the day, which operate on an "itinerary", some operate at curbside and he presented a picture of two vending units. He said these are mostly regulated through enforcement by the police department, but the intent of the Municipal Code section that deals with street vendors was originally geared to have them move frequently. The ordinance defines 30 minute periods at any given site, and because there are some loopholes in the Code, two operate in a general area throughout the entire day.

Mr. Rojas noted some of the vending unit owners were present who would like to address the Commission, through his translation.

**Chair Finlay** introduced Jonelyn Whales who had just arrived and she called the first five public speakers. She noted that if those in the audience who had just arrived to speak on Item 2, they need to complete speaker cards.

**Commissioner Harris** said there are problems with the way in which vending units can be enforced by police, especially the issue regarding trucks being stationary in the public right-of-way. He asked if police have reported other complaints relative to the issue. Mr. Rojas said this came to staff's attention because enforcement was being done, the owners had an attorney with them, and staff reviewed the Code and determined that they were currently acting under the current ordinance. Therefore, the loophole needs to be addressed.

Public Comment:

Hector Montes, El Sobrante, said the matter is very important to him and said the income serves his family. He said this type of employment is honorable and their business serves their family well. We believe we are not affecting anyone, we operate according to all regulations in the ordinance, they have public health permits from the County and no complaints have been filed by anyone. He believes the initiative is a type of discrimination and the operation of the business is not liked by the City. He felt it was unfair that through all of their investment and hard work they have done, the Commission would now try to stop something they have worked so hard on. The area they operate in is Latino in nature, it does not disturb anyone and he thanked the Commission.

**Vice Chair Rao** questioned and confirmed Mr. Montes attended a portion of the meeting which was recently conducted in Spanish, and the matter was discussed in a very broad manner, and he confirmed that it was not the intent of the Commission to shut down the business operations.

**Commissioner Lee** questioned the number of trucks Mr. Montes owned, and Mr. Montes said he owned and operated one truck.

Joaquin Rodriguez said he has worked for approximately 20 years with his vending business, said he supports his family and business from income, said he wanted the Commission to understand this is what they know how to do and asked for their continued support of their

businesses in Richmond. He said he did not attend last night's meeting due to not receiving notice in time and disagreed with what Mr. Rojas was proposing to do. He has been serving 21<sup>st</sup> and Macdonald customers for many years and he needs to continue supporting himself and his family.

**Chair Finlay** reiterated that the Commission will not take action on the item tonight and there would be additional time for operators to voice their opinions. She also said the matter was not instituted by Mr. Rojas, but from the Planning Commission.

**Vice Chair Rao** questioned if Mr. Rodriguez wanted to ask further questions for translation through Mr. Rojas. Mr. Rojas relayed that Mr. Rodriguez felt he was doing a good job translating and requested another meeting be held to further discuss the matter.

Rosalva Orozio, San Pablo, said she operates a catering truck, is a member of the 23<sup>rd</sup> Street Merchant Association and they did not have enough notification to prepare for the meeting. She felt it was not fair and they needed more time to be prepared for these types of meetings. She believes a professional translator was needed, thanked Mr. Rojas for his attempts and they would agree to hire one. She said they feel they are being discriminated against, felt their businesses can be permanent and are legitimate businesses, they care about their customers, one proposal is to relocate to industrial areas and she did not feel they would be able to serve their customers as well. They all pay taxes, licenses, health and safety permits, insurance, rent, they have invested their life savings into their vehicles to start their businesses. She did not feel their businesses are nuisances to the City or to 23<sup>rd</sup> Street, said she is aware of the many changes coming and they want to be part of them.

Mr. Rojas said regarding the issue of the noticing, he acknowledged there were only two days between the date of his hand-delivered notice with the staff report and the actual meeting. Staff was undecided as to whether the item would be placed on the Commission agenda until Friday and agreed more time could have been allotted to vendor owners. He noted there will be additional meetings, review and discussion and he acknowledged his fault in providing a lack of notice.

Mr. Rojas reminded that staff recommendation is: 1) identify whether the ordinance is meant to be transitional in nature; 2) determine if the vendors are to be permanent; 3) to provide direction regarding a policy for renewing permits; and 4) provide direction regarding the street based vendors, which will be a separate ordinance. Staff can bring back this ordinance to the Commission at the same time the outdoor (private property) based ordinance is brought back.

**Vice Chair Rao** questioned how many applications were pending, and Mr. Rojas said staff has approximately 4 applications pending, which are for renewals.

**Commissioner Lee** said he was aware that the Mississippi Catfish operator transitioned to a restaurant, and asked if there were other examples. Mr. Rojas said this was the only one he was aware of over the last four years. However, staff is receiving more requests to operate on a site, build a small take-out window and incorporate that into an existing store; however, this is another alternative to this type of operation. He also noted that two current vendors have invested significantly into their properties, and this was something additional the Commission may want to consider.

**Commissioner Lee** also asked if the proposal was being addressed in the General Plan revision, and Mr. Rojas said the ordinance is not specifically being contemplated, the

consultants had a meeting with the 23<sup>rd</sup> Street Merchants and at that meeting, the issue was brought up as wanting to be addressed. They did not necessarily indicate they wanted to remove the vending units or trucks, but they did specify that there are issues which need to be addressed, such as limiting the number of permits the City issues.

**Commissioner Lee** asked to bring back guidance as to how other communities deal with the same issue. Mr. Rojas said the City of San Pablo does not allow mobile restaurants on 23<sup>rd</sup> Street, which is designated as Neighborhood Commercial and they only allow them within the High Intensity Commercial District. Further north into San Pablo are extensive street improvements being done which in relationship to their future vision. He said Oakland has a similar issue with vendors and have addressed the issue by creating a pilot program. Oakland has intensive use with trucks or units on every other street and they are deemed to be the highest use in terms of units per square footage of streets. Many cities do not allow them and have prohibited them, such as Walnut Creek.

**Vice Chair Rao** questioned and confirmed with Mr. Rojas that the applications have been awaiting approval for approximately 5 months. If they were to be renewed, depending on how the Commission proceeds they could be renewed for two additional years and staff is therefore asking for direction. **Vice Chair Rao** questioned under what section of the ordinance allowed them to be on hold, and Mr. Rojas said staff is not taking any current action with code enforcement and the units are still continuing to operate.

**Chair Finlay** thanked Mr. Rojas for his report and significant work. He asked whether the Commission wished to provide direction on whether mobile vendors are to be transitional or permanent.

**Vice Chair Rao** felt the use should be transitional and suggested putting a timeframe on their operation. **Commissioner Lee** said it seems there have not been many success stories of transitioning to restaurants and felt they might be viewed as permanent. **Commissioner Williams** said it was hopeful that they would be transitional, but in all actuality, it appears they are permanent. **Commissioner Harris** said on private property, he would rather make them permanent installations. He would consider limiting the location of the permanent installations from the current situation and not allowing them in all commercial or industrial areas.

Mr. Rojas said Commissioner Lee and Williams were referring to how they currently operate. He said what is being asked is not whether they look like they are permanent or whether they are transitional, but what should they be as far as the ordinance is concerned. If they should be transitional, the ordinance would need to be strengthened. **Commissioner Lee** said he did not believe we should have them go forward as transitional ventures because there has been no success, and therefore, we should consider them to be permanent.

**Chair Finlay** said she worked on the current ordinance many years ago. It was clearly their intent at that time that this be a transitional use. When she looks at the difference between 23<sup>rd</sup> Street in San Pablo and 23<sup>rd</sup> Street in Richmond, it is day and night. Part of this is due to their improvement project, but part of it is not only proliferation but also how many storefronts are being used for businesses in San Pablo and how many storefronts are not being opened for business in Richmond. She felt there was a direct correlation and she would vote for the units being viewed and used as transitional. She said in update of the ordinance, if the Commission does not isolate the zoning and relocate the units from 23<sup>rd</sup> Street, she would want to see additional distance regulations of more than 300 feet, she would want to see a cap placed on

the number of units could be licensed and she would want to see conformity in hours of operation.

Regarding a policy for the applications, **Chair Finlay** confirmed with Mr. Rojas that staff wanted to identify how long a license should be issued, and if we go with transitional, how many removals should there be. She said she supported a two-year timeframe. If we cap how many times an applicant may be renewed, she confirmed **Vice Chair Rao** would want a cap of no more than two additional times, for a total of no more than years.

**Commissioner Harris** said if someone first applies in 2003, he asked if they would be allowed two more renewals or operate no further than 2009. **Vice Chair Rao** said once the ordinance goes into effect, the clock would start then.

**Commissioner Harris** said he disagreed with the idea, he believes that vendors in trucks can move a lot within the commercial area throughout the day. He said he travels a lot along Macdonald Avenue and he has noticed the restaurant at 22<sup>nd</sup> and Macdonald change ownership twice, a restaurant at 22<sup>nd</sup> and Macdonald open and close, a restaurant at 36<sup>th</sup> and Macdonald open and close. These were all Mexican food establishments and he felt most of their client base patrons the mobile vendor units and not the restaurants. He felt a truck operating on 23<sup>rd</sup> Street takes away business from someone who operates out of a building along Macdonald Avenue. He said he was leaning more toward what is presented on page 5 of the staff report under Strategy 2 or 3; that the units can operate in industrial areas only or prohibiting the operations along key points within the City. He suggested making those operating on private property a permanent business and do not bother with having them transition.

**Commissioner Lee** agreed with Commissioner Harris, but felt there should be some method of grandfathering in the existing businesses and also recommended not accepting any new applications for permanently based mobile vending units.

**Chair Finlay** referred to the third question, do we want to direct staff to prepare revisions to the parking by peddlers and vendors of the Municipal Code and return with a draft ordinance for the Planning Commission's review.

**Commissioner Harris** thanked Mr. Rojas for his report, said all options were provided, as well as providing information from Chapter 14 of the ordinance. Regarding Attachment 3, paragraph A.1. and the 30-minute limitation, he said the idea of this is that a mobile vendor is not supposed to be in the same location for a period of more than 30 minutes. If this is the intent, he suggested additional language be added to say, "Not to exceed 30 minutes in one place within a 24 hour period." "Vehicle relocation shall be at a distance not less than \_\_\_ feet". This way, the mobile vendor must move to a different location after 30 minutes. To him, this is a way of letting the same operators work within the same location. Rather than being on private property, they could circulate up and down 23<sup>rd</sup> Street.

**Commissioner Williams** agreed with Commissioner Harris' comments, but he requested adding an additional reason; that moving after 30 minutes allows those permanent businesses a chance to conduct their business without competition so close to their property. **Commissioner Lee** questioned and confirmed with Mr. Rojas that mobile vendor unit operators were not restricted to different zoned areas. **Commissioner Lee** suggested limited the areas of operation because this could refrain from the competing with restaurants. **Vice Chair Rao** agreed with Commissioner Harris' comments.

**Chair Finlay** directed that staff make the red-lined version of revisions, but clarified there was no consensus for the private property based operators. Mr. Rojas said he could bring back an ordinance that represents both scenarios and a vote could be taken at that time.

**Chair Finlay** referred to the parking issue and she questioned whether this was an issue with a mobile vendor or peddler. Mr. Rojas agreed and said that on the Parkway, two vendors are situated on a corner, there is significant truck traffic and many times and trucks park on top of the sidewalk which creates blockage and congestion.

**Chair Finlay** asked Mr. Rojas to develop the best solutions for parking for both mobile vendors and peddlers. Mr. Rojas questioned if the pending applications should come before the Commission and he questioned how many years those would be considered for. **Chair Finlay** felt those pending applications should be held in abeyance until further notice, and if something would need to be done with them, they could be brought to the Commission's attention.

## **BREAK**

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

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

**Secretary Lee** introduced the project and gave a brief description of it into the record.

**Chair Finlay** said specific questions were posed to staff at the last meeting and asked for an explanation of any changes which may have occurred since that time. Ms. Jonelyn Whales said at the last hearing, staff was asked to bring back drawings and cross sections illustrating how the design and architecture of the proposed homes complied with the City's hillside ordinance. In addition, staff has received many letters from individuals and those living in the Canyon Oaks I subdivision and have suggestions for additional conditions of approval, which are attached at the back of the resolution.

Ms. Whales said on Monday, an Agenda Review meeting was held, conditions were discussed, and there was some question about some of the conditions listed. Staff has gone through the actual resolution and has made those corrections. **Chair Finlay** noted being discussed is the revised Exhibit A.

Ms. Whales discussed changes as follows:

Page 4 of 16 of the resolution, 2<sup>nd</sup> sentence; "The new road shall be paved and landscaped with bio-swales and bio-retention areas to minimize and reduce impervious surfaces."

Page 6 of 16, condition number 17, "The applicant shall obtain written approval from the West County Wastewater District and staff is in receipt of a will-serve letter from this agency."

Page 6 of 16, condition number 24; “Common area landscaping and front yard landscaping shall be installed by the developer prior to occupancy of each residence.”

Page 6 of 16, condition number 26; staff added the words, “to the fullest extent permissible by law”...the applicant shall indemnify and save the City, its agents, officers and employees harmless from and against any and all liability. Claims, suits, actions, damages, penalties and/or cause of action arising from the approval of this ~~subdivision~~ Conditional Use Permit.”

Page 9 of 16, condition number 40; staff inserted after the words, “landscape plans prepared by RMR, date stamped July 25, 2007 by the Richmond Planning Department”.

Page 9 of 16, condition number 43; “construction activity are restricted to the weekday between 7:00 a.m. and 7:00 p.m. These hours may be extended to Saturdays and Sundays between 9:00 a.m. and 6:00 p.m., excluding holidays.” “Earth haul and materials delivery to and from the site will be permitted between the hours of 7:30 and 8:30 a.m. and 4:00 to 5:30 p.m.”

Page 10 of 16, condition number 47; added sentence to the end; “In addition, no overnight parking of construction vehicles shall be allowed on City and County streets. Construction vehicles are only allowed in the designated staging area on the project site.”

Page 13 of 16, condition number 63; staff has crossed out “Richmond Sanitary Service” and inserted “the West County Wastewater District”.

There was also a question regarding the fencing materials to be used between the neighboring residence and staff was directed to return with language for insertion of condition number 67.

Staff was also asked to provide a timeline for the project which was before the Commission on the dais. She said the project was actually submitted to staff for review on March 25, 2005, and staff moved the timeline to today’s date, November 1, 2007. She said the Commission actually recommended approval of the EIR November 2, 2006 and one year later, the Commission was reviewing the CUP for the same project.

Ms. Whales said staff was available for questions; however, all revisions have been brought back as requested.

**Chair Finlay** thanked Ms. Whales for preparing the Canyon Oaks Public Meeting Synopsis, which she had specifically requested because it has been 2.25 years the Commission has been dealing with the project. She counted 20 actual hearings/meetings and she said the project has not been rushed through, without public noticing and/or participation.

**Commissioner Harris** referred to the revised exhibit, page 6 of 16, he discussed making changes from the Richmond Sanitary Service to the West County Wastewater District. Item 17 refers to trash collection which is still being covered by Richmond Sanitary Service. Therefore, he asked that Richmond Sanitary Service remain in the sentence, and Ms. Whales agreed to make this change.

**Commissioner Harris** referred to page 13 of 16, condition number 67A and he thought on Monday, he had requested that the project be reviewed by the Design Review Board and not staff. **Chair Finlay** said this was her understanding, as well.

**Chair Finlay** questioned if there was a drop-dead date for the creation of the land bank and she asked if it tied to any date in the progress of the project. Ms. Harbin said it is to be established and operational at the time that the first unit is occupied.

**Commissioner Lee** confirmed that the Commission was trying to arrive at the specific conditions that will govern or apply to the approval and not the approval itself because the project has already been approved with findings, but no conditions.

**Chair Finlay** noted there were 10 speakers and she reminded everyone that this is a continued hearing and speakers will be limited to 2 minutes each.

#### Public Comments:

Tom Simonsen, Edenbridge, Inc., Los Altos, said in August 2007 the Planning Commission approved the resolution for the CUP, they have been involved with the City for almost 4 years, Edenbridge has been involved for 3 years, Mr. Zentner is present as well as Robert Rourke and Eric Swagg. They have been very active in the community holding public meetings, a May Valley Neighborhood Council meeting was held on October 26, more comments and concerns were voiced and addressed, many members had response letters and many people had questions about drainage and seismic control which have been addressed early on in the process.

**Vice Chair Rao** asked for an explanation about the land bank issue. Mr. Simonsen said this was a condition on page 16, which indicates a specific date of October 1, 2009 for establishment of an easement over the property.

**Commissioner Harris** referred to one of the resolutions he received having to do with the tentative map; resolution 07-04. A condition states that the Final Map shall be prepared to include the following: "A permanent conservation bank easement shall be established with the project sponsors and U.S. Fish and Wildlife Services for APN 513-02-011 for conservation of land dedicated to the lost and endangered species of the habitats...." He said there are subsequent sub-items from the item as well. He said building permits cannot be issued prior to the authorization of a Final Map and this was something that the easement is tied to. Ms. Harbin said from the conditions of approval for the Tentative Map, number 59 reads; "If by October 1, 2009 the US Fish and Wildlife Service has not approved the establishment of the conservation bank, the applicant shall place a conservation easement over the proposed conservation bank lands that shall preclude any development on the proposed bank lands. Other conservation measures such as oak tree planting or other efforts to conserve or protect rare or sensitive issues may still occur on the proposed bank lands but the easement shall ensure that no development can occur on these lands." It was to be recorded at the final map stage.

Eleanor Loynd, said she feels staff has done due diligence in writing of the conditions, there are no buildings planned for over the 400 foot elevation level, we agree that the project is in major compliance with the hillside ordinance, we do suggest the following conditions be added to the list: 1) the homes on the four custom lots shall be limited in size to the largest of the 32 homes on site. Landscape plans should be reviewed by staff. Some of the existing big box homes along San Pablo Ridge are ugly eyesores; 2) A statement should be included which mentions the roughly 20 acre Tri-Lane parcel which is being kept separate from the conservation land bank and may be developed at a later time. Copies of John Zentner's list of four conditions were provided by the Commission, they are not included in the packet but she was told they

were included as part of the Tentative Map. She also mentioned the conservation land bank condition among those conditions. She suggested putting all of those conditions together before the project moves forward to the City Council so they have a complete picture of the project.

**Vice Chair Rao** questioned if their neighborhood council completely supports the project. Mr. Loynd said she is chair of the El Sobrante Planning and Zoning Advisory Committee and this committee is appointed by the El Sobrante Chamber of Commerce and they are in support of the Canyon Oaks II project, including the neighborhood council. **Vice Chair Rao** questioned how the neighborhood council would benefit from the project, and Ms. Loynd said they are benefiting because there are only 36 homes and not 1200 homes.

**Chair Finlay** asked if staff reviewed the four items which have been checked off on the second page, and Ms. Whales said they are part of the actual conditions on the tentative tract map.

Robert M. Rourke, RMR Design Group, Concord, said he was available to answer any technical questions of the project.

Herk Schusteff questioned how well attended the 20 meetings were and what type of meetings they were, the conditions are diluted for the proposal's for profit land bank, thinks it would be more appropriate that no tree removal or grading should be allowed until the land bank is firmly established and irreversible. The public has been led to believe the proposed land bank is guaranteed, felt the project would destroy the habitat of other projects in the region, whole groves of trees are proposed to be removed, said configuration of the lots are undefined, and a concrete effort must be made prior to removing any trees.

James Murray, Oakland, said he has been to similar meetings, the process of setting aside lands for conservation was important, the hillside ordinance is in effect already, and regarding the general question on how the project affects the interests of people seeking to develop the land, the conditions are known by those applying for permits and it is not unreasonable for them to take conditions into account, they should look closely at whether they will be able to conform to conditions and still make a profit. He hoped homes would not be built on areas that are too steep and that trees part of the overall ecological character will receive full protection.

Jerome Smith cited a poem into the record regarding his objections to the already approved project, he requested amendment to condition 26 to include the extension of 20 years' liability on indemnity in case the plan does not work. He felt the land conservation bank should be amended to one of the items to be defined before permits are issued, this could be a revenue source for the developer, suggested all money is certifiably in full consistency and in compliance with the hillside ordinance, suggested a written explanation be delivered to the Planning Commission and the City Council describing the rationale, justification for pre-approval of the project within 45 days of the CUP's issuance, extend to 25 years the responsibility of the developer and interested parties for all natural damage to the community.

Bill Helsel said the Commission has figured out that the 300 acre conservation land bank has a big carrot to the community in approval of the project, he encouraged the Commission to make the finalization of the project a condition to any grading or tree removal. He asked to save more oak trees; Coast Live Oaks which last longer than any house, said he attended a meeting last month and a list of trees were provided to be saved and Mr. Zentner expressed a willingness to look at some of them. He felt trees at the north corner of the site would provide a great screen between the community and San Pablo Dam Road. New trees are slated for planting on the

north boundary in part of the area, but it would take 40-50 years for the trees to look mature. He said most trees in the grove are saved, but the three essential trees are not proposed and asked to consider these changes to the CUP.

Joanne Spalding supported Ms. Loynd's comments on the Tri-Lane site and the comments regarding guaranteeing the land bank in advance of allowing construction on the project. She questioned the legality of voting to approve the CUP with the findings that the project is not completely consistent with the hillside ordinance without imposing conditions, rendering the project consistent. She said the hillside ordinance contains many environmental standards and the project violates those, especially heights of retaining walls. She felt the Commission has caused a harmful precedent enabling future development that violates the hillside ordinance. She said the ordinance is and has been a cornerstone and the Planning Commission voted to preserve it intact in 2003. Approving this development undermines the City's ability to enforce the ordinance in the future politically and legally. She encouraged the Commission to think very carefully about how the City will treat other developments that come before the Commission and encouraged developing a rationale that will enable the Commission to enforce provisions of the hillside ordinance despite the precedent setting approval.

**Commissioner Lee** questioned Ms. Spalding in her voicing that the project was not approved legally as a CUP, and Ms. Spalding said she was out of the country when the original meeting occurred, the document she has specifically states that the project is not completely consistent with the hillside ordinance. Therefore, some condition of approval would be required to render it consistent. To approve a CUP without having conditions before the Commission strikes her as procedurally improper. City Attorney Privat opined that the process was followed correctly.

Barret Donahue said there was no phase I or II, she lives in Canyon Oaks, she believes the project to be a whitewash, believes the decision was in conflict with the hillside ordinance, believes the comments about the real estate market and 36 homes was inaccurate, they have had foreclosures, no homes have been sold in 18 months, people are renting as alternatives and there is no need as a Planning Commission to look at demand and she is sickened by this.

Roddie Stelle, El Sobrante, distributed a photo to staff for Commissioners, said she was not totally against the development but was concerned primarily with the destruction of the habitat and trees in the area, is glad to see the development has been made smaller, requested seeing many of the trees preserved, she presented trees to be removed along the northern border which will greatly affect the existing homeowners and wildlife corridor to the San Pablo Creek. The trees act as a buffer and privacy screen between existing and new homes, and most people would rather have a natural setting of mature trees behind their homes, the land is park-like and the trees act as a noise reducer as well.

**Chair Finlay** questioned whether the Commission had to take rebuttal, and City Attorney Privat said this was up to the applicant.

#### *Rebuttal – Applicant*

Tom Simonsen, Edenbridge, Inc., said a number of pictures have been taken on site, noted there is a private driveway leading to the estate lots and Mr. Helsel specifically saving three trees, and they will be able to preserve those trees. His only concern is that residents have many concerns about the project, they want to be good neighbors as they build and sell homes, there is concern about the market, they foresee homes built 1-2 years away, they are sensitive to dust, noise, and other measures and they are available to speak about these at any time.

**Vice Chair Rao** questioned how the land bank process works. Mr. Simonsen said conservation land banks are created for the purpose of preserving land in perpetuity. In order to do this, they work through a number of resource agencies which is complex, the easement must be agreed to everyone having jurisdiction over the area to be preserved. Once there is agreement, there is an approach of how and when the credits should be sold. Once this occurs, an organization is created to protect the property in perpetuity as it exists. As projects come along and have impacts, there are credits on a ratio basis which are sold. Therefore, a portion of that property may be sold for a certain of impacted property in another location.

**Vice Chair Rao** asked about hardships would occur if the applicant moved toward establishing the land bank and then with the removal of trees and Mr. Simonsen said a conservation easement is much easier than creating a land bank. It is contingent upon approval of a number of resource agencies. The timeline can get drawn out into years. A conservation easement can be put over it and modified in the future to meet the requirements of a resource agency, but generally, this is a very long process in certain cases.

#### Rebuttal – Opponent

Susan Swift, El Sobrante, said we are all in agreement that the conservation land bank is a difficult process but was the carrot put in front of the community that allowed people to support the project at all and it is important that the process be respected. Additionally, there are three projects including Canyon Oaks II going on at the same time. Construction and congestion will be heavy. The work underway is to retrofit San Pablo Dam at the exact same timeframe and rebuilding the high school, so all roads within a half-mile radius will be under construction at the same time. She felt getting a land bank in order would be a good measure to delay the project and it also would provide for the market to correct itself.

Ms. Whales concluded by stating that the resolution has been modified with several changes from the applicant and Commissioners, and all has been taken into consideration and is before the Commission.

**Commissioner Williams** said it sounds like Mr. Simonsen said they preferred the conservation easement and he asked what mechanisms are in place to keep the application process transparent, so everyone knows what is going on. Ms. Whales said the developer will have to work with Fish and Game regarding the easement. In proceeding through the process for entitlements, there will be many conditions impacted on the project, as well as the mitigation monitoring and reporting program which the developer must satisfy. Therefore, staff will be checking on the progress.

Ms. Whales also said the developer has agreed for a condition to be added that would state that the City would be involved in crafting the language for the conservation easement. **Chair Finlay** asked the City Attorney to quickly draft the language.

**Commissioner Lee** said his request would involve modifying Condition number 2; "...on Lots 3-14 and grading of those lots shall be limited to the preparation of stepped or pole building foundations." A previous project approved, the Sunset Court Subdivision on Valley View Road, the developer to limit the grading showed them pole foundation houses which basically go on top of the existing grade rather than cause pads to be graded into the hillside. In light of their approach to conform to the hillside ordinance, he wanted to propose the acceptability of taking out the option of stepped foundations and making it just pole foundations for lots 3-10. He said

he was not a landscape or civil engineer, but this would allow significantly less grading and therefore, houses could be built into the trees rather than the trees taken out. He spoke to the applicant twice about this and it does changes the entire flavor of the project.

**Commissioner Harris** confirmed with Commissioner Lee that only lots 3-10 would apply to the pole building foundations. He likes the idea and does not think it is a hardship. **Vice Chair Rao** felt this would require a lot less grading using this process. **Chair Finlay** said she understands the grading issue, the developer did not necessarily accept the idea and she questioned whether it was appropriate to open up the new change. Ms. Whales felt the question was more appropriate for the Design Review Board than the Planning Commission. **Commissioner Harris** felt this would not be out of line, said he had requested additional information as the Commission has not seen any home design, landscaping or street layouts, which are portions of the hillside ordinance that the Commission is attempting to conform to.

Ms. Harbin felt the matter should be reviewed during design of the houses with the grading plan at the Design Review Board stage. **Commissioner Lee** disagreed and felt either one is called out, and he suggested that only poled foundations be used.

**Commissioner Harris** referred to condition 3, and asked it be changed to read, "Prior to issuance of a final building permit for the 32 single family dwellings, the applicant shall ensure....."

**Commissioner Harris** said some reference is made to the landscape plans. Condition 18 states that the "applicant shall install landscaping on site prior to the issuance of the certificate of occupancy for the building, as approved as shown on the landscape plan, date stamped and received June 27, 2005." He asked if this document was the conceptual landscape plan in front of the Commission. Ms. Whales said the document has been considerably modified over time. **Commissioner Harris** felt it was a mute point therefore with the grading of lots 3-10. He asked that the date be left blank and add that "the final landscape plan approved by the Design Review Board."

**Commissioner Harris** referred to condition 26 on page 7, he said Mr. Smith's intent was to place some duration on the indemnification clause. Mr. Simonsen said they would include a timeline.

**Commissioner Lee** asked if there was support for his suggestion to use pole foundations. Mr. Simonsen said the architecture has been shown through the tentative map process fully, there have been already five plans within the architecture that match the contours of the slope. The "pole or sloped foundations" wording appears in the hillside ordinance and if they go away from grading some of the sloped area, the balance of the site is shifted and the hillside ordinance encourages or mandates balance of the site. Grading the slope also helps them control drainage from that part of the property.

**Commissioner Harris** confirmed with Mr. Simonsen that dirt would be taken from the north side of the property and this would address some of the excavated area so that not as much dirt would be taken off-site. Mr. Simonsen said pole architecture also stands that foundation and elevation out into the slope and makes it much more visible.

Robert Rourke, RMR Design Group, said one of his concerns is that if a pole house is done, the underside of the floor is cantilevered out and open which becomes a wild land fire issue. Also there is a permanently dark environment out there with no trees. In the end, there will be a dead

space, he agreed it sounds good in concept, but because of that void, some jurisdictions want skirt walls which becomes a negative that comes from hillside development. He said a band of trees could be shielded against the area, but people will want some amount of private rear yard area and if a pole house is built to the slope, there will be no rear yard place. The grading does utilize step foundations and it uses down splits and up splits and there will be a period of time after the grading is complete where there will be a loss of the quality of environment that people enjoy today. But, with the planted mitigation plan over time, the area will fill back in and it will be a much better finished product than using a poled foundation. And, after the slope is landscaped, the average person will never know the hill was even shaped a certain way originally.

### *Rebuttal – Opponent*

Herk Schusteff, empathized with the developer, was not opposed to the number of homes and he questioned why modifications could not be made that are appropriate. He felt the condition should be talked about fairly and comprehensively. If it cost more, it might be worth it. He is not opposed to reasonable development and wanted the project to go through appropriately. He hoped this type of process could continue and he would be attending the next meeting to share more ideas. Most importantly is the step back and some flexibility and they would like to see a reasonable proposal that the community could support.

The public hearing was closed.

**ACTION: It was M/S (Harris/Williams) to adopt Resolution 07-12 containing the required findings with statements of facts, according with the Conditional Use Permit for the Canyon Oaks II project with hillside provisions for consistency, with the following revisions from the revised Resolution presented this date and approve CU 1102306, with the following amendments: Condition 3; “Prior to issuance of a final building permit for the 32 single family dwellings”; Condition 17 on page 6; rephrasing this as Richmond Sanitary Services as the refuse collection agency as opposed to the West County Wastewater District; Condition 18 on page 6; “The applicant shall install all landscaping on site prior to issuance of the last Certificate of Occupancy for the buildings The landscape design shall be approved by the City of Richmond Design Review Board.” Condition 67 on page 13, changing the “Planning Department” to the “Design Review Board.” Condition 67A; “fencing materials to share fencing between residences shall be of good design and approved by the City of Richmond Design Review Board prior to the issuance of a building permit or the 32 single family dwellings.” Condition 2 on page 4; leave language as is. Condition 4 on page 4, regarding the land bank wording to immediately follow the last sentence: “The applicant shall submit any land grant application to the City of Richmond Planning Department prior to any such application for review and approval.” The motion was adopted by the following vote: 3-2 (Rao and Lee voted no).**

## **COMMISSION BUSINESS**

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

Planning and Building Services Director Richard Mitchell announced there will be a General Plan Land Use Community Meeting on Saturday morning at the Recreation Center from 9:00 a.m. to 1:00 p.m.

**Commissioner Harris** said a meeting was announced regarding December 20<sup>th</sup> regarding Chevron EIR review and he asked if any decision had been made on whether this would take place. Mr. Mitchell said staff will have additional information forthcoming to the Commission in terms of whether the EIR will be ready for review at that time.

**Brown Act – Public Forum - None**

### **Adjournment**

The meeting was adjourned at 10:30 p.m.

---