

PLANNING COMMISSION MEETING
COUNCIL CHAMBERS, RICHMOND CITY HALL
1401 Marina Way South, Richmond, CA
October 16, 2008
7:00 p.m.

COMMISSION MEMBERS

Virginia Finlay, Chair
Stephen A. Williams
Charles Duncan

Vice Chair Nagarajo Rao
Jeff Lee, Secretary
Vacant

The meeting was called to order by Vice Chair Rao at 7:10 p.m.

Secretary Lee led in the Pledge of Allegiance.

ROLL CALL

Present: Vice Chair Rao, Secretary Lee, Commissioners Williams and Duncan

Absent: Chair Finlay

INTRODUCTIONS

Staff Present: Janet Harbin, Lina Velasco, Richard Mitchell, Mary Renfro

Vice Chair Rao confirmed that the public can comment on study session items. Assistant City Attorney Renfro explained that tonight's agenda has two distinct areas: an informational item in which no public comment will be received or Planning Commission action taken, and the study session in which public comment can be taken and the Planning Commission can take action.

Item No. 1 is about a project in which the only discretionary planning approval required was the Design Review Permit. The DRB met on October 8, certified the project's EIR and approved the conditional design review permit. Prior to that, some members of the Planning Commission had asked for an opportunity to consider the project but as it requires no CUP, variance, or subdivision map, the Planning Commission has no decision making role.

Commissioner Duncan asked why, if the Planning Commission was extended this opportunity as a courtesy, it was not extended at a time when public comment was open. Ms. Renfro explained that the public comment period had already been open for quite some time when the Planning Commission made its public request.

Informational Item

- 1. EIR/DR 1104434 – Honda Port of Entry Project, Port of Richmond** – Notice is hereby given that at the City of Richmond Planning Commission meeting of October 16, 2008, Planning Commissioners will be given an opportunity to comment in the final Environmental Impact Report and project approvals. No public testimony will be received at this meeting and the Planning Commission will take no action on the project. The existing auto import activities are located at 1317 Canal Blvd. and proposed for expansion within the area known as Point Potrero Marin Terminal. (APNs 560-320-002, -

016, -017). The Zoning District is M-3 – Heavy Industrial and M-4 – Marine Industrial. Surplus Property Authority of Richmond, owner; Port of Richmond, applicant. Planner: Keiran Slaughter.

Kieran Slaughter, Assistant Planner, provided an outline of the project's progress to date and explained that on October 8, 2008 the Design Review Board adopted a conditional approval of Design Review Permit DR1104 and certification of EIR1104-434. There is no action to be taken on the project until the Design Review appeal date on October 20, 2008.

Secretary Lee said that when he asked for this hearing, he intended and expected a full presentation on the project so that the Commission could consider and comment on the issues at hand.

Commissioner Duncan asked Ms. Renfro if the decision to bypass the Planning Commission with this item was based solely on the fact that there are no entitlements required, and questioned who the source agency of the decision was.

Ms. Renfro explained that she considered local CEQA guidelines, what was required in terms of entitlements for the project, and found a hearing by the Planning Commission to be unnecessary. The published Draft EIR stated that the Design Review Permit was the discretionary measure for the project; CEQA guidelines stipulate that the body which certifies the EIR or adopts the negative declaration is the decision making body.

Commissioner Duncan acknowledged the legal validity of the decision, but argued that courtesy dictates the Planning Commission oversees an application that involves not only a change, but a broad expansion, in land use. He said he was incensed that they were not granted this opportunity and that counsel's decision has ostensibly set a precedent that large projects involving a much expanded land use but no CUP or variance do not require a Planning Commission hearing. He said his opinion is rooted in the tradition of the land use and he is angered by the profound lack of courtesy and common sense shown. He asked if the project involves any time-sensitive funding that would have been lost due to a protracted hearing process.

Janet Harbin, Principal Planner, said she believes there were some funding mechanisms dependent upon an expedited process. She added that the City Council had already shared their comments on and support of the project.

Commissioner Duncan said that despite legal opinion and his appreciation of time-sensitive funding, the entire process has been breached in an incredibly disappointing manner. The City's governing bodies are supposed to be on the same team; when they start acting in opposition to another, suspicion and mistrust arise.

Secretary Lee concurred, adding he could not support any project with an EIR that has not been heard by the Planning Commission. He said that this project results in a significant impact on the use of the land and referenced the City's website which states that the DRB acts as "an advisory body to the Planning Commission in cases involving a land use decision." He added that the design review process offers no consideration for the opposition and fails to provide an opportunity for rebuttal.

Vice Chair Rao also believed it was very disappointing that a project of this magnitude has not come before the Planning Commission. He questioned the time constraints, noting that six months ago there was ample time to discuss the matter.

Commissioner Duncan said he still expects a full presentation on the project including its issues, areas of significance, and their mitigations.

Richard Mitchell, Planning and Building Services Director, said that the project description and EIR has been published, but if there is an interest staff can schedule some level of review at the next or a subsequent meeting. But, he noted this would have no impact on the approval process. He also noted that the second item is relevant in that staff has been directed by counsel to move forward with a merger of the Design Review Board and Planning Commission. One reason for doing so is to more efficiently address this kind of unusual situation. He explained that in many cities, the DRB is a subcommittee that essentially advises the Planning Commission; Richmond's DRB is an independent authority. Assuming they can complete this process, projects like this should move forward in a more conventional manner.

Secretary Lee said that since the Planning Commission has not asked or decided to remove this project from tonight's agenda, he felt there was no reason the presentation should not proceed as scheduled.

Mr. Mitchell said the only option is to schedule it for a future meeting when staff can come prepared with informational materials. Secretary Lee asked why it is not available at this time. Mr. Mitchell explained that since the DRB already made a decision to complete the project, an additional study session for the Planning Commission would be considered redundant or superfluous. He offered to add it to a subsequent meeting where he will bring all pertinent parties and provide a full presentation for informational purposes only.

Secretary Lee said he believed that this defies the intent, and to hear and comment on the project after it goes to the City Council was absurd.

Vice Chair Rao asked the Commissioners' opinion on scheduling a study session at a future meeting.

Commissioner Williams said that whatever they do, the same rules apply with no opportunity for public participation and no real authority on the part of the Planning Commission. He voiced surprise that the project did not require Commission involvement considering that it involved water transportation, marine cargo handling, marina/deep sea transportation, and freight.

STUDY SESSION

Ms. Harbin requested that Item 3 be moved up on the Agenda in order for the consultant to make a presentation.

- 3. Residential Design Guidelines for Additions to Heritage Homes – Citywide – STUDY SESSION** to review the recently adopted Residential Design Guidelines for Additions to Heritage Homes (APNs: Citywide). Various zoning districts. Planner: Lisa Velasco.

Lisa Velasco, Senior Planner, introduced John Mickey of Opticos Design who consulted with the Planning Department in preparation of the Residential Design Guidelines.

Mr. Mickey provided an overview on the components and use of the guidelines designed to give very specific, yet flexible, guidance on styles for Heritage Homes in Richmond. The guidelines currently cover additions and recommended modifications to Spanish Revival, Bungalow, Arts and Crafts, Tudor, and Minimal Traditional styles of architecture.

Ms. Velasco noted that these guidelines are not meant to be independent of the zoning ordinance and are intentionally vague. She explained that staff still has some suggested modifications to make to the guidelines and asked the Planning Commission for their comments.

Commissioner Duncan said that this is long overdue and that while vague, is certainly beneficial to anyone looking to initiate or govern design. He suggested that the final document introduce black line drawings into all of its illustrative material. Mr. Mickey reviewed the current plan for production and distribution of the document and agreed to look into beefing up the illustrations.

Vice Chair Rao and Commissioner Williams agreed that the document is well thought-out and long overdue.

Public Comments:

Don Woodrow, DRB Boardmember, agreed that the guidelines will be very helpful but said he is unclear to what extent they will be applied. He asked that someone spell out the process and scope with which they will govern.

Commissioner Duncan defined the term guideline as a set of principles that are used to establish a direction and that can be interpreted in different ways. He noted that they are not codified by law and said that in his opinion, discretionary interpretation would be used with these guidelines.

- 2. City of Richmond, Design Review Board/Planning Commission Merger Ordinance**
– STUDY SESSION to review the ordinance initiated by the City Council to establish a process and modify the language of all related ordinances to merge the design review function of the present Design Review Board into the Planning Commission's duties. (applicable Citywide) Planner: Janet Harbin

Ms. Harbin provided the staff report, described the proposed design review role of the Planning Commission, its sub-committee, and the Zoning Administrator. She noted that the majority of public comment received was not in favor of this change and if anything, called for greater controls placed on development.

Commissioner Duncan confirmed that an outside consultant assisted in drafting the ordinance. Ms. Harbin explained that it was initially crafted by environmental and planning consultant Doug Herring in conjunction with Assistant City Attorney Renfro, and then modified by the Planning Department before returning to the City Attorney's office.

Vice Chair Rao questioned and confirmed that the expected timeframe for the merger would need to return to the City Council for review sometime in the next few months.

Secretary Lee asked why the initially proposed number of nine Planning Commissioners was reduced to seven. Ms. Harbin said that the City Council decided to return to a seven member

body and wanted the Planning Commission to be the same size. Secretary Lee suggested returning to a total of nine members given that the current Planning Commission and Design Review Board have a combined total of fourteen members.

Secretary Lee recommended removing the stipend offer as it changes the tone of what is expected when someone is being paid. He said if anything, the money should be given to the subcommittee as its members will essentially be performing two jobs. He also suggested deleting Section 15.04930.020 which deals with the subcommittee and instead let the re-formed Planning Commission entity decide what subcommittees are necessary. He said that he would like to expand the concept of subcommittees such that they can assign one for each significant project, should they choose. He thought it would be more appropriate to assign members proportional to their skills and interest in a given project.

Secretary Lee suggested an amendment to the Application Requirements, Section 15.04930.120; "~~are strongly encouraged~~ shall..." as he firmly believes in trying to resolve as much as possible in the neighborhood council arena. He also asked that staff handle as much as possible as long as each decision is subsequently noticed.

Vice Chair Rao asked at what point the Planning Commission stipulates that it would like a full public hearing on an item. Ms. Harbin said that the staff report and subcommittee presentation would clearly outline the findings and issues with each application; the Planning Commission could then decide to place the item on the next meeting's consent calendar or as a public hearing item.

Public Comments:

Michael Woldemar, Architect and former Design Review Board member, reviewed the former Zoning Ordinance topic known as Control Development which was essentially design review before Planning Commission action for certain pockets of the City while other areas were subject only to staff review. He said that this created a negative view of staff and strong emphasis on public review, and he cautioned that the ordinance may meet with strong public opposition if not addressed in smaller increments. He stressed the need for standard conditions of approval and also questioned whether or not the addition of subcommittees would streamline the Design Review/Planning Commission process. He asked that this proposal have more public review and worried that it may create more problems than it is attempting to solve.

Secretary Lee asked his opinion on creating application based subcommittees rather than a permanent one. Mr. Woldemar said that it depends greatly upon how thoroughly staff investigates and presents each application.

Commissioner Duncan said that the ordinance as proposed would work in certain municipalities, specifically those that are fairly homogenous, but Richmond is interesting in that it is one of the most diverse communities for its size. He said that he does not see how consolidating a board into a three member subcommittee will be capable of handling the scope of design issues in an area of such diverse topography, housing stock and industry. Rather than combining them, other municipalities are finding it necessary to splinter their DRB and Planning Commission as well as develop additional committees. He agreed with Mr. Woldemar that the current model, while it needs to be tweaked, is a good one and that standardized conditions of approval would eliminate a good deal of the burden. He also agreed with Mr. Woldemar that to reduce the input of neighborhood committees by placing more at the level of staff review does a disservice to the

public. He voiced concern with the proposed residential thresholds and reduction in public discretion.

Commissioner Duncan confirmed the language in ordinance section Significant Changes to Design Review which requires on page 405 that, “the development applications that involve entitlements and addition to design review have those other entitlements approved prior to the design elements being reviewed by the design review committee.” He agreed with the requirement, stating that it is logical that planning approval come before design approval and strongly recommended that the current process be reversed.

Secretary Lee referenced the July 29, 2008 City Council meeting agenda report which stated that this action would have no direct financial impact and noted that the Procedure for Project Development and Application Design Review allow for the hire of consultants is necessary. He said that it seems this could in fact result in financial impact. Mr. Mitchell said that the financial impact, if any, would be borne by the applicant. He explained that a great number of issues result from designs created by unqualified individuals and that while staff can work with them on smaller projects, those of a large or complicated nature may require that the applicant hire a professional. He acknowledged that the term, Town Architect, is used, but at this point it does not appear that the Town has the volume of activity to support that role.

Secretary Lee asked if a seven member commission could use three-member non-standing subcommittees or if that required a nine member commission. Ms. Renfro explained that the quorum of a seven member board is four, so a subcommittee of three is easily permissible. Secretary Lee said that he can agree to a seven member commission under those circumstances.

Secretary Lee asked if it is appropriate for the Commission to collectively make a recommendation to the City Council and Vice Chair Rao confirmed. Commissioner Williams cautioned that a black and white recommendation would be considered a stronghold.

Secretary Lee made a motion to request the following changes to the ordinance, which did not receive a second:

Delete 3.20.010.C – Stipend

Delete 15.04.930.020 – Subcommittee

Amend the first sentence of 15.04.930.120 from “are strongly encouraged” to “shall”.

Planning Director Mitchell said there is a legal issue with replacing “strongly encouraged” with “shall.” He explained that a neighborhood council is a volunteer group that comes together in a range of forms; while it is perfectly reasonable for them to review and comment on a project, you cannot require an applicant to involve a group that does not have a legal documented process.

Commissioner Williams asked if based on Director Mitchell’s comments, Secretary Lee would be willing to change his motion. Vice Chair Rao confirmed that Secretary Lee was in favor of deleting the entire subcommittee section.

Secretary Lee clarified that this is a recommendation only if the ordinance is passed by the City Council.

ACTION: It was M/S (Lee/Williams) to recommend deletion of Sections 3.20.010.C and 15.04.930.020 of the drafted Ordinance upon approval by the City Council; Vote 2-1; motion failed (Rao abstained).

Brown Act – Public Forum – None

MINUTES

Commissioner Duncan noted that he was not present until the June 5, 2008 minutes and will abstain from all prior minutes.

November 1, 2007

ACTION: It was M/S (Lee/Williams) to accept the minutes of November 1, 2007; unanimously approved (Duncan abstained).

December 10, 2007

Vice Chair Rao said he will abstain from the minutes of December 10, 2007.

ACTION: It was M/S (Williams/Lee) to accept the minutes of December 10, 2007; unanimously approved (Rao and Duncan abstained).

January 17, 2008

Secretary Lee asked and Ms. Harbin confirmed that it is appropriate to await an eligible quorum before voting on the minutes of January 17, 2008.

Vice Chair Rao asked that the minutes of the December 10, 2007 and January 17, 2008 minutes be held over to the next meeting where Chair Finlay is present.

March 20, 2008

ACTION: It was M/S (Lee/Williams) to accept the minutes of March 20, 2008; unanimously approved (Duncan abstained).

June 5, 2008

Commissioner Williams asked that the minutes be amended to reflect an adjournment time of 12:35 a.m.

ACTION: It was M/S (Lee/Williams) to accept the minutes of June 5, 2008, as amended; unanimously approved.

COMMISSION BUSINESS

4. Reports of Officers, Commissioners and Staff

Ms. Renfro reminded the Commissioners that every appointed board member and commissioner in the City is required to take a two-hour ethics training course this month. They

will be held in Council Chambers on October 23, 2008 from 9 to 11 a.m. and 1 to 3 p.m. and on October 30, 2008 from 1 to 3 p.m. It will be conducted by Randy Riddle and Shannon Wagner and is coordinated by Lisa Stevenson in Human Resources.

Vice Chair Rao confirmed with Ms. Renfro that legislation was passed a year or two ago and that it seems to be a requirement in addition to the online course taken last year.

Commissioner Duncan asked how to sign-up for the course, and Ms. Harbin offered to coordinate with Ms. Stevenson. Vice Chair Rao pointed out that some people work and weekday attendance may be very difficult. Ms. Harbin agreed to speak with Ms. Stevenson and suggest an evening session.

Vice Chair Rao asked that the commissioners be supplied with documentation of this course being required in addition to last year's course.

Adjournment

The meeting was adjourned at 8:55 p.m.