

PLANNING COMMISSION MEETING
COUNCIL CHAMBERS, RICHMOND CITY HALL
1401 Marina Way South, Richmond, CA
September 7, 2006
7:00 p.m.

COMMISSION MEMBERS

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

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

The meeting was called to order by **Chair Finlay** at 7:17 p.m.

Vice Chair Williams led in the Pledge of Allegiance.

ROLL CALL

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

Absent: None

INTRODUCTIONS

Staff Present: Janet Harbin, Hector Rojas, Mary Renfrow, Richard Mitchell, Lamont Thompson, Steve Duran, Allen Wolken, Tanya Boyce

MINUTES:

Chair Finlay reported she had a series of small changes to some of the minutes that she would be forwarding to staff for minor correction.

June 9, 2005

ACTION: It was M/S (Rao/Lopez) to approve the minutes of June 9, 2005; Vote: 6-0-1 (Lee abstained).

July 7, 2005

ACTION: It was M/S (Rao/Lopez) to approve the minutes of July 7, 2005; Vote: 4-0-3 (Finlay, Winston and Lee abstained).

August 4, 2005

ACTION: It was M/S (Rao/Winston) to approve the minutes of August 4, 2005; Vote: 6-0-1 (Williams abstained).

November 3, 2005

ACTION: It was M/S (Rao/Winston) to approve the minutes of November 3, 2005; Vote: 6-0-1 (Lee abstained).

December 1, 2005

ACTION: It was M/S (Rao/Winston) to approve the minutes of December 1, 2005; Vote: 6-0-1 (Lee abstained).

January 5, 2006

ACTION: It was M/S (Rao/Lopez) to approve the minutes of January 5, 2006; Vote: 6-0-1 (Lee abstained).

June 1, 2006

ACTION: It was M/S (Rao/Winston) to approve the minutes of June 1, 2006; Vote: 6-0-1 (Lee abstained).

August 3, 2006

Commissioner Winston referred to page 23, second paragraph, and requested changing the word, "quality" to "density".

ACTION: It was M/S (Rao/Winston) to approve the minutes of August 3, 2006, as amended; unanimously approved.

Chair Finlay gave an overview of the procedures for speaker registration and public hearing functions and procedures. She said any decision approved may be appealed in writing to the City Clerk by Monday, September 18, 2006 by 5:00 p.m.

CONSENT CALENDAR

Secretary Lopez noted the Consent Calendar consisted of Item 1. **Commissioner Harris** requested removing Item 1 from the Consent Calendar.

Chair Finlay noted that four (4) complete binder sets of documents regarding Item 2 were available for public review during the public hearing.

ACTION: It was M/S (Winston/Rao) to remove Item 1 from the Consent Calendar; unanimously approved.

Brown Act – There were no speakers.

Consent Items Approved:

None

Items Discussed:

1. **V 1103027 – Variance on a Substandard Lot at 1603 Garvin Avenue - PUBLIC HEARING** to consider a proposal to construct a new single family residence on a substandard lot at 1603 Garvin Avenue (APN 529-140-013). SFR-3, Single Family Residential District. Robert Sutherland, owner/applicant.

The public hearing was opened.

Tanya Boyce gave the staff report and described the proposal, said the variance had been before the DRB in the past and previously denied. However, since that time the applicant has made staff aware of additional information. The applicant was now proposing to use one of the pre-approved infill home designs and information was provided that the lot was an original lot and was originally found to be inappropriate for residential development. She said staff now felt the lot was appropriate for development and recommended approval.

Commissioner Harris felt that when the item was discussed in the past, it was not so much that the site was not considered appropriate for residential development, but the two-story house proposed was out of place and was the only two story home in the general area.

Ms. Boyce said the house directly across the street was built on a created lot and had not yet been built when the previous application was denied. She presented a picture of the new house built, which was much larger than the one proposed for consideration, said it was much closer to the street frontage and was in the middle of two single story homes.

Chair Finlay questioned where the parking for the home was located, and **Ms. Boyce** said the proposal went through Design Review, did not come to the Planning Commission because the lot was created through a lot line adjustment process, which was an administrative process. A parking easement is required on the property and the garage was located in the rear of the lot.

Chair Finlay voiced concern about the massiveness of the development and felt it was out of scale, which she said unfortunately could not be re-visited now.

Commissioner Lee felt the Commission was making some of their justification for this most recent applicant based on its similarity to a house that he felt was a mistake. **Ms. Boyce** noted the house was much more similar to the house around the corner from it where the exact same situation had occurred.

Commissioner Lee felt critical was the interpretation of two lots with separate parcel numbers being co-owned anytime since 1949 and voiced concerns about additional variance requests similar to this request. He said he contacted the president of the neighborhood council who supported the project; however, he voiced concern with the precedent set for future circumstances.

Commissioner Rao questioned whether or not problems would be created as a result of the Commission approving the project, and **Ms. Boyce** did not feel problems would be created; however, he did agree with Commissioner Lee's comments about the necessity to get more clarification under which circumstances small lots are appropriate and which are not. Her understanding was that this analysis was being done and would be presented along with the General Plan.

Secretary Lopez felt one intent of the use of the infill plans was to prevent blight and not necessarily to allow further development, and she did not feel blight was a criteria here in approving the plan. **Ms. Boyce** said the property owner sold the lot, has fenced off the property, has removed the trees and the lot is empty, and the applicant is proposing to develop it.

Mary Renfrow said staff would be looking at this issue as part of the General Plan update and there might be an amendment to the ordinance to add in certain conditions that need to be met if changes were made on the lots.

Robert Sutherland, owner/applicant, asked that the Commission grant him permission to build an infill design plan on his 25 foot wide parcel, said last summer the Commission granted approval for a home to be built on a 25 foot parcel, as well as a home built across the street on a 75 foot wide parcel, which was split into two parcels.

Tanya Boyce gave the staff summary and said staff recommends conditional approval of the project.

There were no public speakers, and the public hearing was closed.

ACTION: It was M/S (Rao/Winston) to approve V 1103027 based on conditions 1-5 contained in the staff report; Vote: 6-0-1 (Lee abstained).

2. EID/TM/GPA/RZ 1101112 – Point Richmond Shores at Dornan Drive and Brickyard Cove Road - PUBLIC HEARING to consider the Point Richmond Shores project, also known as Terminal One, proposed by Toll Brothers, consisting of an Environmental Impact Report (EIR) with Mitigation Monitoring and Reporting Program; a General Plan Amendment; Rezoning to Planned Area District; Vesting Tentative Map; and, Design Review. The project site is located at Dornan Drive and Brickyard Cove Road and is proposed for construction of the following: a) approximately 330 residential condominium units contained within two-5 story buildings constructed over a parking podium; and, b) an approximately 1.9-acre public park. C-C, Coastline Commercial Zoning District. Redevelopment Agency, owner; Toll Brothers, applicant.

Janet Harbin gave the staff report, said there have been many public hearings on the project, said that at the last meeting the Planning Commission and the public had many questions, and she hoped that the PowerPoint presentation would help clarify issues raised.

Ms. Harbin discussed the role of the Development Review Committee; the mitigation and monitoring program; approval of the vesting tentative map, design review permit, and recommendation to the City Council on the General Plan Amendment and Rezoning for the project.

Chair Finlay noted it was her understanding that the Planning Commission was the recommending body to the City Council for certification of the EIR. **Janet Harbin** said two of the land use decisions were to be made by the Planning Commission; Design Review approval and the Vesting Tentative Map. The role of the Planning Commission regarding the EIR was that they must certify the EIR as adequate for those decisions. In addition, the City Council is to make two decisions—the General Plan Amendment and Rezoning, and prior to these decisions being made, the City Council must certify the EIR as adequate for those decisions.

Commissioner Winston said when the item was previously before the Commission, they were trying to avoid the order of decision-making confusion and the opinion received at that time from the City Attorney's Office was that the Commission could not continue a part of an item and that they all had to be taken together as one request. She said the Commission had requested bringing back all 5 agenda items as separate items; 1) EIR; 2) Tentative Map; 3) Design Review Permit; 4) General Plan Amendment and Rezoning recommendation to the City Council; 5) Recommendation to the City Council on remaining items. She questioned why the item was not split up and posted as individual items because the Commission wanted the ability to individually vote on some of the actions and not others.

Ms. Harbin said once the public hearing was closed, the first action the Commission must take was determining whether or not the EIR was adequate for the vesting tentative map. She said if the Commission wanted to certify the EIR, it could be pulled separately and approved in one resolution, and then continue the other items for consideration in the future.

Ms. Harbin said the Commission's questions had to do with the Land Deposition Agreement (LDA); Toll Bros. development team and LSA Associates and their interests in the project; public access to Planning Commission meeting materials; sewer infrastructure and treatment plant capacity; the EIR's relationship to planning policy; additional visual simulations which were asked for; CEQA process for the Terminal One site remediation.

Ms. Harbin said the LDA was between Toll Bros. and the Redevelopment Agency, which was entered into in 2003, it sets terms and conditions of the sale of the property, it was provided to the Planning Commissioners, the City Council would approve the LDA, Amendment to the LDA was listed in the EIR because it may be required—there was an un-extension of the LDA in order to move forward with pierings and consider the project. The LDA is within the purview of the City Council and Redevelopment Agency and should not have any influence over the Planning Commission in making their decisions; no LSA employees have worked simultaneously on the Pt. Richmond Shores EIR and directly for Toll Bros. When the Pt. Richmond Shores EIR was prepared, LSA was selected as the consultant. LSA has previously completed work on the historical information and environmental document considered by the Redevelopment Agency and the City Council for the LDA, and no conflict of interest rules or restricted timelines apply to consultants preparing EIR's. She read CEQA guidelines Section 15084.d which outlined various options, rules and procedures associated with the consultants preparing EIR's.

Rich Davidson, City Engineer, said the Commission received a copy of the Swinerton Study, noted Swinerton was a consultant for the City to provide overview of operations for the wastewater treatment plant and collection system and were in no way connected with Toll Bros. He said the project would connect to Brickyard Cove Road, it would be a 12" gravity line that flows to Dornan Drive, to the Ferry Point Pump Station, and lifted from there in a 6" line and to another lift station at the beginning of the tunnel. It travels through the tunnel in an 8" line and then changes to a 10" line once out of the tunnel and flows toward West Richmond. From West Richmond to West Cutting, it flows into a 36" line and then goes to a 54" line on Cutting and to a 66" main line that goes down Canal to the wastewater treatment plant.

In the Swinerton Study, they looked at the condition of the lines and they were judged to be satisfactory. There is a future project for September for a study and inspection of the 66" line. He referred to page 6 of the Swinerton Study and the flow from the proposed development.

The EIR pointed out there would be 56,100 gallons per day projected from the development. The Swinerton study showed 241,500 gallons per day. The difference was due to the Swinerton Study using 1990 building codes and the EIR used the new building codes with low flush toilets. He said the Swinerton Study revealed that the pipe sizes were adequate from the new development.

Mr. Davidson said staff also included new projects coming into the area, said there would be no new developments in the area, and the Toll Bros. marina site and PG&E Tank site projects would tie into the system, but would be routed to an alternate route. He said the lift station at Ferry Point was also looked at. He said the City has an improvement project underway to

improve all pump stations in Richmond, both storm and sanitary. He noted the conditions of approval would require an increase in pump station size, staff has already installed a generator and new telemetry equipment to address power outages and to provide a trigger system to notify the City of any problems.

Mr. Davidson said they system was being reviewed during dry weather conditions, said the current flow was just under 9 million gallons per day. The capacity of the plant is 16 million gallons dry weather and this project would contribute .056 million gallons per day. He noted that during the new General Plan update process, staff will have a better idea on what projects would be developed, rezoned and contributing more capacity.

Mr. Davidson said Richmond experiences problems during the rainy season. The tides affect the water that enters the sewer system, some areas of the sewer system are old and cracking, when tides are high groundwater rises and this allows water to get into the pipes which was called infiltration. He said much is dependent upon how the plant is operated during the rainy season or during a storm. A wet weather study was recently done in March, 32 devices monitored the water flow through the sewer lines during the winter. With the data entered into the sewer master plan, staff will be able to calculate the existing problems, identify the priority of fixing the lines, and help eliminate the overflow problems. He said the City experienced 4 overflows since 2002, said the overflows occurred on the east side and the west side where the project is proposed did not experience any problems.

Mr. Davidson said the City is looking at how the plant is managed during the rainy season to help eliminate infiltration and overflows, work is continuing to be done on their pumps, they utilize a sewer model which now assists in identifying weak points or bottlenecks in the system, they have an extensive Capital Improvement Program which will be updated once the wet weather information is compiled, and they were currently underway with two projects to eliminate the infiltration problem on Macdonald Avenue by the new Target Store and another on San Pablo Avenue. Staff believes that, along with these items, the fats, oils and grease ordinance (FOG) just passed and sewer lateral ordinance just passed, it would help in reducing their I & I problem by about 30%.

Mr. Davidson noted they would be presenting the new ordinance to realtors, said the City recently passed their new fee ordinance which would allow the City to raise additional funds to assist with CIP projects.

Shannon Allen, LSA, said the question has been raised as to why the Bay Keeper vs. the City of Richmond lawsuit had not been mentioned in the draft EIR or the response to comments document. Ms. Allen said the lawsuit was not relevant to the analysis of the project's potential impact on the environment and the action of the suit does not change potential physical impacts of this proposed project. She said the capacity of the local pipes for this project and cumulative projects was adequate, the proposed pump station for the project will be adequately sized and reviewed by the City, and there is capacity at the wastewater treatment plant for the project and cumulative projects.

Ms. Allen said the utilities were analyzed in the draft EIR, said the criteria were stated on page 198, and she read them. Analysis included in the EIR was adequate and the clarification of the issues presented and in the packet does not represent substantive new information and does not disclose any significant environmental impact or a substantial increase in the severity of an impact analyzed.

Ms. Allen said another question raised was the discussion of certain City policies, an introduction of which was on page 39 of the draft EIR. She said the document is not required to discuss any inconsistencies between the project and policy except within the descriptions of the existing setting. She said policy conflict is not in and of itself a significant impact under CEQA and nothing within CEQA that would suggest that a potential conflict as such and would require mitigation.

Ms. Allen said it is the role of the decision-makers to interpret policy and policy analysis has been included in the staff report and Commission binder.

Another question raised related to the need for a visual simulation of a photo in the lobby of the Mayor's office. She noted visual resources were contained in Chapter 5 of the draft EIR and further detailed in a response to comments document. The viewpoints included in the draft EIR are representative public views of the project site and simulations are tools to better illustrate the change and while the photo would provide additional context, it would not change the findings of the EIR, and by not developing an additional simulation the EIR was not inadequate.

Allen Wolken, Redevelopment Agency, discussed the CEQA process and environmental clean-up of the Terminal One site, gave a background of the Agency's amendment and merger process in 1999, said the City of Richmond, and not the Redevelopment Agency, has owned the property since the early 1900's. He said the City received a letter from the Regional Water Quality Control Board directing clean up of the environmental contamination on the site. The Agency worked with hazardous material experts, developed a remediation plan, requested LSA to do the CEQA document, and said the 2004 CEQA analysis done for the clean-up also looked at historic resources associated with the Terminal One site. The site was deemed not eligible for listing on the National California or Richmond registers, concluded that the remediation activities were anticipated as part of the EIR document from 1999 as part of the amendment and merger process, and a notice of determination for the cleanup was filed August 13, 2004. Previous CEQA and historical resource analysis has been included in the EIR under Chapter 8, page 267.

Janet Harbin, noted concerns raised by the public included: the Bay Trail commuter route cumulative impacts, change phase of trail construction, project's distance from mass transit, Toll Bros. not addressing neighbor's concerns in the Pt. Richmond area; project heights, look, mass, density and affordable housing in-lieu fee calculation.

Bay Trail Commuter Route: She said the project does not include development of a bay trail commuter route on Brickyard Cove Road as it did not seem to be the most efficient or reasonable approach for the bay trail and it was felt people would walk between the project and the shoreline. There would be no way to complete a safe connection and the more preferred route was to go to the Bay.

The residential development of the area would not have a significant adverse physical impact on the existing Bay Trail. She noted the trail would serve a population of 7-8 million people.

Cumulative Impacts: The existing project plus cumulative growth of Pt. Richmond equals 2,210 people. The project includes construction of parks and open space, is set back away from the shoreline and there is 1.9 acres to build a park for public use.

Phase of Trail Construction: Public safety issues were identified for installing the trail earlier in the construction phase, which would be difficult to do when actual construction equipment is in operation. Conditions of approval would ensure a Class I trail completion

Project Phasing: This is not in the purview of the Planning Commission, but something the applicant would submit to staff prior to construction.

Distance from Mass Transit: The project is within 1.25 miles from a bus stop; the closest one was an AC Transit Route 72-M bus at South Garrard Avenue and East Richmond Avenue. She noted it would take an average of 20 minutes for someone to walk to the location. There are sidewalks, bike paths and bay trail connections in the area to get to the bus stop. She noted there was policy discussion on the General Plan amendment on page 41.

Neighborhood Concerns: The applicant has been trying to work with the neighborhood.

Project's Height, Mass, Density: The 2004 proposal included 9 buildings, and Ferry Point Way was between buildings. The 2005 proposal had only 2 buildings and Ferry Point Way was a shoreline road. Toll Bros. responded by reducing the number of buildings and put Ferry Point Way closer to the shoreline with a park in between that and the buildings.

Toll Bros. has requested rescinding some of the DRB conditions of approval, which have been discussed in previous reports. The City and Toll Bros. met to keep the project on track and review issues. The Planning Commission can give direction to include and/or add certain conditions back into the project, such as moving the building closest to the shoreline back which would reduce visual impacts of the front of the building.

The project's massing was found in the visual resources section, the planning policy chapter discusses a variety of character, preservation of visual aspects, compatibility, and enhancement of shoreline. The project does not need to meet every policy, but it should meet the majority of the policies, and LSA has written a memo to this aspect in explaining how the project did meet the majority of the general plan policies.

Affordable Housing In-Lieu Fee Calculation: She said this was difficult to estimate as to specifically what the number will be. The in-lieu fee is 7% of construction valuation for the housing which does not include the garages, it will be calculated by the Building Department prior to permits being pulled, and it would be paid at that time. The closest estimate is that it would be in the millions of dollars and would be used for future affordable housing to be built in the City.

Ms. Harbin said the options before the Planning Commission are: Certification of the EIR, project approval, project approval with conditions, project denial, or continuance of the item. In order to determine if the EIR is adequate or inadequate, the Planning Commission will need to make its own decision. If the EIR is determined to be inadequate, the Planning Commission will need to detail the inadequacies with no further taken by the Planning Commission, and the item would then be subject to appeal to the City Council.

Ms. Harbin said staff recommends that the Planning Commission discuss the following issues: certification of the EIR, the project's merits, project approval, vesting tentative map, the design review permit, consideration of items that would be recommended to the City Council for final approval which would be the general Plan amendment and rezoning.

Commissioner Winston said there was a comment made by Shannon Allen of LSA regarding the General Plan Policy Analysis and how policy need to or not need to be met in determining whether or not an EIR is adequate. She felt many issues she raised were regarding general plan policies and other trail alignment policies under the Bay Trails Plan. She questioned whether or not CEQA requires identifying impacts if a policy has not been met and questioned if a policy held less weight.

Ms. Allen said the analysis that is required is a general analysis of the project's consistency with the goals and policies of a plan. One way to perform this analysis is to go into the Bay Trail plan and pull out every single goal and policy and do an analysis that would reveal whether the project is consistent or applicable. She said in this instance, she did not see that the EIR pulled out every single one, there was a table, and what staff has subsequently done was add more analysis in the staff report. Under CEQA it is not required that every single goal and policy be discussed, but that a representative selection and analysis be done as to which ones are applicable and why the project would be consistent or inconsistent with it. Ultimately, the persons making the decisions regarding the adequacy of the EIR are those who either agree or disagree with the policy analysis. She said an inconsistency between a policy and the project does not necessarily mean that the project would have a physical impact on the environment, and an EIR measures the physical impacts. **Commissioner Winston** said her comments were not just that the policy was not adequately addressed, but more that the impacts failed to be identified with respect to the policy and that's what she was looking for in the analysis.

Lynnette Diaz, Principal with LSA, said the intent of CEQA as an informational document is that it does provide a description of the project's relationship to applicable policy and was done a number of general ways in EIR's. She felt that Section 15125.d may help provide more clarification to Commissioner Winston's questions. The other extreme would be to list every single policy and discuss the project's relationship to that policy, but there is nothing in CEQA or any other case law that suggest that a project in consistency with a particular policy should be identified as a significant CEQA impact; however, this is not to say that it is not something the Commission should consider as part of the project's merits. She noted that a 2005 court case has revealed that a project inconsistency with a policy was not a significant impact under CEQA and that this does not by itself amount to a significant environmental effect in an EIR but is merely a factor to be considered in determining whether the project would have an environmental effect, which would require mitigation.

Commissioner Winston said she understood, but felt some of the impacts should have been discussed and then mitigated which was left out. Ms. Diaz said only physical impacts should be identified, and the lack of interconnectivity of a bay trail does not meet the significance criteria to be identified as a significant impact.

Commissioner Winston referred to the historical relevance of Terminal One and she did not receive this. **Ms. Allen** said it is discussed in the Initial Study in the technical appendices, A-19, the Cultural Resources Checklist, and she read it, noting that the clean up project was separate and it was determined that the building could come down. So, the project proponent when selected by the City to develop the site was given to understand by the City that there would be no building there and so the developer came in with that understanding, the EIR discusses this fact.

Commissioner Winston referred to the Ferry Point Way and the fact that this was the shoreline road that cited as one which maximizes the expansive views of the shoreline from Brickyard Cove Road by providing a shoreline road and public open space. However, a memo from Mr.

Davidson indicates that the intent was not to have traffic re-directed; that Brickyard Cove was the designated route. She asked Mr. Davidson if he saw sufficient capacity and parking to provide public access to the expansive views or not. **Mr. Davidson** said when he wrote the memo, the site plan he reviewed showed the loop road as a private road, and the way it was connected, Brickyard Cove Road was coming down into the private road directing all traffic onto the private road. He felt if he lived there, he would not want public traffic directed onto a private road because the owners must maintain that road and his comment dealt with this fact. **Commissioner Winston** thanked him for answering her question and further understood his rationale.

Chair Finlay felt she remembered that by making the loop road the only through-road and keeping the current configuration of the units, it would diffuse the train traffic for the view traffic so that one road would not be bearing the brunt of both types of drivers.

Commissioner Rao asked for a timeline and budget amount of the City's CIP Program, and **Mr. Davidson** noted the current CIP program was approximately \$20 million, they just passed a new bond, passed a sewer rate increase, and also a new fee ordinance that increased the sewer hook-up fees for new homes. He said the funding goes toward the CIP Program which earmarks projects identified within the flow plan study.

Commissioner Rao confirmed there was no overflow in the Dornan Drive area. He asked what would change the current situation to cause overflow, and **Mr. Davidson** said if they had pump failures at Ferry Point or Keller Beach, the Dornan Drive area would be impacted; however, the pump stations are being worked on currently and the shoreline interceptor was within the CIP program. He confirmed there was no effect on the situation with the Toll Bros. project.

Commissioner Harris referenced the street layout, and questioned whether or not specific suggestions such as crosswalks, signage, etc. should be addressed through conditions of approval or recommendations to be brought forth to engineering. **Richard Mitchell** felt the Commission had the authority to condition the project as to what would work best for a recommendation for approval. **Chair Finlay** confirmed that the Commission has broad range of authority in this area and could also term the condition to read, "...meeting with the approval of the City Engineer".

Dennis O'Keefe noted that if there were a significant change to the plan, they would need to have their traffic consultant review the change. He said there is a small concern with the east intersection and how one crosses the street, but as long as the site distance was present, it would work.

Commissioner Lopez referred to the CIP Program and asked if the \$20 million bond was associated with the Toll Bros. project, and **Mr. Davidson** said it was directed to the collection system for the sanitary sewers within the Richmond Sewer District. She asked if anything being planned to fund additional capacity and **Mr. Davidson** said not from the Toll Bros. project, but there could be some improvements to pipes with tidal influence within the Pt. Richmond area or the Cutting Canal area. He said increase of the pump size was the only improvement staff saw that was needed as a result of the Toll Bros. project, which is a condition of approval.

Commissioner Lee confirmed that if the Commission chose not to certify the EIR due to its inadequacy, it would detail those inadequacies and the decision could be appealed to the City Council. The Commission would then have no further input. **Commissioner Winston** said this

was why she asked for the public hearing items and actions to be listed separately. She said the Commission must close the public hearing to take action on any of the resolutions.

Ms. Renfrow said if the Commission certifies or does not certify the EIR, this is all that can be appealed. No decision has been made on design review or on vesting tentative map, so there is nothing to appeal in that area. Just the EIR issue could be appealed to the City Council who would make a decision. **Commissioner Lee** felt it was critical to know whether the Commission then would have any further input on the project or not, and **Ms. Renfrow** said she felt the Commission would have further input.

Commissioner Winston voiced concern and wanted to obtain an accurate explanation on the process if the Commission certified or did not certify the EIR. **Ms. Renfrow** said that if the Commission certified the EIR, the next decision was design review and vesting tentative map which could be considered separately by two separate resolutions. Once the public hearing is closed, the one critical decision was the EIR; if it is not certified, the Commission is done. If it is certified, the Commission may move onto subsequent decisions. However, once the public hearing has been closed, the Commission may take under advisement for decision or ruling of other items.

Chair Finlay questioned if the Commission denies the EIR, why would the Commission be finished, and **Ms. Renfrow** said under CEQA, the question before the Commission is whether the EIR document adequate. The Commission can choose to certify the EIR, but deny the project, and **Chair Finlay** felt the staff report was incorrectly written.

Commissioner Winston questioned the Commission's action regarding the tentative map. She confirmed that if the map was approved is it appeal able to the City Council. However, if the EIR was denied, only the tentative map could be approved. She said this was one of the reasons she wanted separate public hearings so that the EIR issues could be better addressed. She said the request made at the last hearing was for staff to prepare findings of inadequacies and list out all items separately under individual public hearings. **Ms. Renfrow** said staff had attempted to do this; however, she questioned whether the Commission was satisfied with staff's efforts to address the issues and therefore, it is up to the Commission to make a motion on the adequacy of the EIR.

Commissioner Winston said over the past two months she has reviewed inadequacies and her problems with staff associated with the EIR report and the failure of the document to explore and offer mitigations to address impacts. She voiced concern that after such efforts, she felt like she was being stonewalled. **Ms. Renfrow** said she read CEQA guidelines 15088.5—if there is significant new information to be added to the EIR, then it would have to be re-circulated. If the issue is that the majority of the Planning Commission finds that what the EIR says is not adequate, there must be a motion to specifically direct staff to fix the EIR. Staff has attempted to clarify and address the issues without changing the EIR. But, if the EIR needs to be changed, that is the specific motion and direction to be given to them. If they do this, it requires re-circulation. **Commissioner Winston** said while there were issues that received additional attention such as sewer capacity and new information, there are many issues that are listed as fact without analysis behind it.

Chair Finlay noted the public hearing was open and confirmed with staff there were 28 speakers. She said the Commission has heard the item multiple times, asked speakers to only speak if they had new and substantive testimony and reviewed rules for speaking.

Janet Harbin questioned whether the Planning Commission wanted to hear the applicant's presentation and **Chair Finlay** asked how it differed from what the Commission has already seen.

Ben Helber, said Toll Bros. believes the EIR is adequate, has been working on the project over 2.5 years, and they would appreciate the Commission take action on it tonight.

Public Comments:

Cory Lawrence, Cushman and Wakefield, read into the record a statement in favor of the project, noted the positive contributions the project for the city, and felt the Toll Bros. plan was the best use of the property.

Kevin Hampton, voiced concern that the Commission would consider rights of the public to speak but respected moving the meeting forward, said Toll Bros. was supportive of inner city, training programs, and providing opportunities in jobs, redevelopment dollars, affordable housing, and supported the project.

Donald Brown, felt the project would be beneficial to residents and the City and urged the Commission to approve it.

Jason McKinley Jacobs, hoped for approval of the project and felt it would help those moving into the City and provide funding which might be used for before and after school programs.

Dennis Hicks, supported the project, felt it would enhance the beauty of the shoreline, make Richmond a more beautiful city and felt the project would bring more revenue to the City so that the street re-pavement program would get better funded.

William Acevedo, Economic Development Commission, believed the project will have a beneficial impact on the City's economic redevelopment, said the project would increase tax revenue, residents would fuel demand for establishment of businesses, and asked to carefully examine the case of Goleta Valley regarding alternatives discussed in an EIR and he read an excerpt from the case, and requested the Commission move expeditiously to either certify the EIR or not.

Alicia Guerra, Morrison & Foerster, on behalf of Toll Bros, said it was clear that for purposes of compliance with the Brown Act and the City's ordinance, the agenda does inform the public what action the Commission would take on the project, felt the staff report specified information and 5 resolutions with actions and the Commission can act in one single motion or separating the items, and noted the Commission can act on the EIR first as a matter of state law, and can also take action on each of the additional items. The 180 day period for certification of the EIR has long passed and she felt there was plenty of evidence in order to make a decision this evening.

Ms. Renfrow referenced Guideline 15092 that states, "after considering the final EIR, the lead agency may decide whether or how to approve or carry out the project." If the Commission denies the certification of the EIR, under the guidelines it would be a defensible position to then deny the project. And, the applicant's attorney agrees with this.

Wayne Ellis, understands that the City would receive over \$21 million from the project if approved and then \$2.25 million annually for the next 30 years, and he felt this was desperately

needed. Half of the money would assist Richmond projects, would create needed jobs, and asked the Commission to approve the project.

Bruce Beyaert, TRAC, referred to the September 3rd letter, said the City has the precedent of Toll Bros. being required to extend the Bay Trail to the west side of Brick Landing and TRAC suggests in Exhibit B that there is an impact, it should be mitigated, is not recognized in the EIR which will close the remaining gap between the west side of Brickyard Landing and the northeast corner of Pt. Richmond Shores. The commute trail in the Bay Trail plan on the north side of the project is recommended to be built in compliance with Caltrans Class I standards, however, contrary to the staff recommendation, the Commission should mandate that the vesting tentative map address the plan standards, which it currently did not. Also, the staff report recommended condition 15 be administratively approved per the Planning Director and he asked that the Commission require that the park be built as part of Phase I before the start of Phase II and the public park on parcel G should be built and open for public use before the start of Phase II of the project. Otherwise, there is a construction zone for all public Bay Trail and park amenities until 2011 or later.

Lee Huo, representing the Bay Trail Project, concurs with comments made by Bruce Beyaert, requested the Commission consider re-designation of the General Plan from recreational to higher density use, as it changes the physical conditions of the area of what can be built and it would impact recreational uses such as the Bay Trail in how it is placed and how open spaces are conducted. Secondly, he felt that the southern alignment of the Bay Trail along the northern boundary of the project site on Brickyard Cove Road would be impacted physically.

Chris Curtis, felt the EIR should not be certified tonight, felt staff has been in talks with Toll Bros. all along, said the final plan was completed prior to them ever seeking residents out and in an effort to come to some resolution, they agreed to meet with them and were unsuccessful. He thanked the construction workers for coming out and had the City received cooperation from Toll Bros. they would have been working.

Andrea Glerum, felt they were not debating whether or not the project ultimately built would be a union job. Whatever project approved will pay prevailing wage as well as providing revenues to the City. The City's webpage features a banner of their neighborhood, with boats, condominiums, and hoped that the left side of that banner not characterize the Toll Bros. project, which Mr. Knox characterized as the Brooklyn tenements. The site is one of the most beautiful and unique, recommending the right project for the site was important as it will be a City landmark for the next 100 years. She felt the project as designed was not the right project.

Howard, Eiliman, CCC, Pt. Richmond, said he spent many years dealing with contentious planning, said he submitted a letter, said staff had indicated documents were made available, said their messenger had to wait all day on Tuesday and they did not get a copy of the action documents until late Tuesday, said he had a public records act demand trying to get copies of the violation notices with the Regional Water Quality Control Board for over one month and they have not all been released. His issue deals with sewer capacity, said the Commission is being told that the sewer plant has capacity, but there have been over 800 violation notices since November of 2001 up to today. If the plant has capacity, it should not cost \$20 million to repair it, felt there were other cities along the bay that do not have tidal problems, and felt the infrastructure was in serious disrepair. The lawsuit itself does not have a physical effect on the environment. The allegations of the complaint are telling the City that there is not enough capacity in the plant because if there were, there would be no overflowing problems every time it rains.

He encouraged the Commission to look at the Swinerton Study and it states nothing about the violations over time. The discussion of the capacity is mathematical formulas, charts, graphs but there is not one thing addressed as to whether or not the capacity is real when the plant violates the Clean Water Act in the NPDES permits in every storm event. He felt the first issue was the adequacy of the EIR. He felt it was completely inadequate regarding sewage for its failure to set up a mitigation program to give the public some assurance that adding 221,000 gallons per day would not exacerbate a serious public health problem. The Commission is required if the project is approved to make findings that the determination is consistent with the public's health, safety and welfare, and he submitted respectfully that in light of the problems that are a matter of public record, the Commission cannot and should not make those findings. The action documents were not available until late Tuesday and asked where the economic data was located for the determination that the alternatives were economically infeasible.

Jonathan Livingston, distributed a schematic of what he believed was a gross violation of the intent of the EIR in the fact there is a significant amount of undeveloped land, with thousands of potential future residents, felt the Commission should look into the future and see what the Toll Bros. project would be like given the traffic concerns. If the loop road is turned into a public road, then the road also offers huge potential view impacts.

Suzie Grubler, asked Chair Finlay to remember the photo from Item 1 and said Toll Bros. was that house in their neighborhood.

Corky Booze', commended the entire Commission for their professionalism and felt the people of Richmond deserve a person like Commissioner Winston, said the community has spoken and has asked that the project be denied. He felt one of the biggest problem was Toll Bros.' attitude with locating affordable housing in the project, which would be paid off. He felt the project should be of high quality and not necessarily for high profits, and those in Brickyard Cove want a voice. He wants Toll Bros. to stand behind the people of Richmond and provide something of high quality on the waterfront.

Beverly Galloway, felt that the precedent set of Item 1 heard previously in the meeting clearly demonstrates the problem when an out of scale building is allowed in an area and is opposed to zoning ordinances. She felt there should be consideration of the entire area as a plan before a single development is passed and cited future traffic problems, said in 2003 an RFP was out for 242 units, the winner of the RFP was Toll Bros., and it was understood they would build an exceptional residential community at the minimum of 242 luxury condominiums of a quality similar to the Villas at Dublin Ranch, more units may be allowed if within the approximately density of 21 du's/buildable acre. She recommended adherence to the original criteria. Regarding the shoreline road, BCDC Design Review Board required as a condition of approval a shoreline road affording maximum public access and this should be a public road and designed as a public road. The original Condition #5 from the DRB was omitted previously and has disappeared, and she read it; "The applicant shall improve the proposed Bay Point Road to be in compliance with collector street dimensions...." She asked to add back that condition.

Daniel Cooper, San Francisco Bay Keeper, said staff indicated in their supplemental report that the Pt. Richmond project would have no impact on the collection system or the sewage treatment plant based primarily on the Swinerton Report, but he felt the report had some basic flaws. He referred to page 7 of the report, discussed flows and the amount of sewage which goes up significantly during certain times, and a second neighborhood analysis does not use diurnal codes but simply provides an average. If you combine the diurnal flow of Pt. Richmond

and Brickyard Cove, the flows go above the capacity of the pipe and felt the pipe would need to be replaced. Also, there has been four washouts of the pipe, referred to page 6 and the 2.8% increase in average flows and there was no analysis as to whether the 2.8% would increase washout during wet weather, and there is no wet weather analysis in the report at all. Lastly, the report indicates no cumulative impacts from this project or other projects, there is no list of other projects, no discussion of what the other projects are, what their contribution is and what that might do to washout. He felt the report was inadequate. When the new analysis is completed, he felt the EIR would need to include it and be re-circulated.

Edward Durbin, said he circulated a document with 10 points in it called "Points of Consideration by the Planning Commission", felt it would get down to what the issues were and facts of the case. They agree the development is suitable for residential use, the community is in favor of developing the site, but felt the project did not mitigate impacts of not complying with the General Plan, the project may not provide funds to offset City services, the neighborhood request for adequate road along the shore has not been satisfied, the building setbacks are not consistent with community standards, the design of the project does not fit the shoreline environment to preserve the coastal aspects of the City, and he felt the project could be built with economic gain for the developer within the requirements.

Ethel Dotson, asked the Commission to deny the EIR, said the land was public trust land, said the land is of historical significance, felt all staff needed training in historical preservation, she felt there was social and economic discrimination, felt lower income families should be afforded affordable housing, and said the project was located on an earthquake fault.

BREAK

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

Janet Harbin gave a staff summation, discussed options for the Commission to be considered which were outlined in the staff report, said staff's recommendation was to: 1) adopt the resolution certifying the final EIR as adequate to support the approval of the design review permit and the vesting tentative tract map and adopting the mitigation and monitoring program in Exhibit B for the Point Richmond Shores Project; 2) adopt the resolution conditionally approving the vesting tentative parcel map in Exhibit C for the Point Richmond Shores Project; 3) adopt the resolution conditionally approving Design Review Permit in Exhibit D for the Point Richmond Shores project; 4) adopt the resolution recommending the City Council certify the Final EIR and approve a proposed amendment to the General Plan in Exhibit E for the Point Richmond Shores Project; 5) adopt the resolution recommending to the City Council Certification of the Final EIR and adoption of the ordinance amending the Zoning Code in Exhibit F for the Point Richmond Shores project, with project plan as Exhibit G (previously received by Planning Commissioners);

Or

6) Certify the final EIR as adequate to support the approval of the design review permit and the vesting tentative tract map, and adopting the mitigation and monitoring program in Exhibit B for the Point Richmond Shores Project, and deny the design review permit and tentative tract map, and recommend denial to the City Council for the General Plan Amendment and Rezoning;

Or

7) Deny certification of the Final EIR, and deny the design review permit and tentative tract map, and recommend denial to the City Council for the General Plan Amendment and Rezoning.

ACTION: It was M/S (Winston/Rao) to close the public hearing. Vote: 7-0.

Commissioner Winston felt there was another option and recommended moving that the Planning Commission deny the certification of the Final EIR, and not act on any of the other items. She felt that the Commission should not take action on any of the other items because she wanted a more informed EIR, wanted to be able to look at all options in order to assess and define all impacts related to the project. She felt that if the project gets appealed and if the Council does not agree with the Planning Commission and certifies the EIR, then the Commission can look in detail at the tentative map and make some further decisions on it.

In response to questions of Chair Finlay and Commissioner Winston, **City Attorney Mary Renfrow** said if one decision is made such as to deny certification of the EIR, this was the only appeal able decision. She felt the vesting tentative map must return to the Commission; however, when she read the Design Review ordinance it was unclear as to who must make the final decision, as it was not cut and dry.

Commissioner Winston felt the design review conditions as submitted were adequate; however, she did not agree with the five items proposed to be removed by Toll Bros.

Commissioner Winston made a motion that the Planning Commission reject the Resolution which is Exhibit B certifying the FEIR which is Exhibit A and find that the FEIR as adequate to support the approval of the design review permit and vesting tentative tract map and the Planning Commission also rejects the mitigation and monitoring program for the Point Richmond Shores Project. This motion is based on Planning Commission being unable to make the following findings:

- Finding A, #2, CEQA Findings;
- Finding A, #4, pursuant to CEQA Guidelines, Section 15093;
- Finding C, #5.b Findings of Fact and existing General Plan Zoning Alternative;
- Goal LU-A and LU-A-1, Form and Appearance, pages 42, 43, and 48 of the EIR;
- Goal LU-G, Form and Appearance, EIR pages 43, 44;
- Goal LU-K, Residential Areas, pages 43 and 48;
- Guideline #1, Shoreline Areas, FEIR pages 44 and 48;
- Guideline #5, West Shoreline, FEIR pages 44 and 48;
- Circulation Element Policy CIR-B.3 and Guideline #5, Shoreline Area, FEIR pages 44 and 48;
- Communities Facilities Element, FEIR pages 45 and 48, Policy CF-A-8, Recreation and Park Facilities;
- City of Richmond Zoning Ordinance, Special Features Overlay, Number 1, Regulation #3;
- Redevelopment Plan, FEIR page 50, Project Area 11-A;
- San Francisco Bay Trail Alignment Policy Number 11, FEIR pages 54 and 55; and
- Existing General Plan Zoning Alternative, pages 242, 7.C;

Commissioner Rao requested a substitute motion that the Commission certify the EIR and Mitigation and Monitoring Reporting Program. **Commissioner Lopez** seconded the motion because she believed that some of the issues that were addressed in the first motion could be addressed through the approval or denial of the Tentative Map and felt the questions relating to the sewer system were answered tonight.

VOTE ON SUBSTITUTE MOTION: Ayes: Lopez, Rao; Finlay. Noes: Lee, Harris, Winston, Williams. Motion failed by a vote of 4-3.

ACTION: It was **M/S (Winston/Williams)** that the Planning Commission reject the Resolution, which is Exhibit B certifying the FEIR, which is Exhibit A, and find that the FEIR as adequate to support the approval of the design review permit and vesting tentative tract map, and the Planning Commission also reject the mitigation and monitoring program for the Point Richmond Shores Project. This motion is based on Planning Commission being unable to make the following findings (which were read out loud in further detail by the maker of the motion):

- Finding A, #2, CEQA Findings;
- Finding A, #4, pursuant to CEQA Guidelines, Section 15093;
- Finding C, #5.b Findings of Fact and existing General Plan Zoning Alternative;
- Goal LU-A and LU-A-1, Form and Appearance, pages 42, 43, and 48 of the EIR;
- Goal LU-G, Form and Appearance, EIR pages 43, 44;
- Goal LU-K, Residential Areas, pages 43 and 48;
- Guideline #1, Shoreline Areas, FEIR pages 44 and 48;
- Guideline #5, West Shoreline, FEIR pages 44 and 48;
- Circulation Element Policy CIR-B.3 and Guideline #5, Shoreline Area, FEIR pages 44 and 48;
- Communities Facilities Element, FEIR pages 45 and 48, Policy CF-A-8, Recreation and Park Facilities;
- City of Richmond Zoning Ordinance, Special Features Overlay, Number 1, Regulation #3;
- Redevelopment Plan, FEIR page 50, Project Area 11-A;
- San Francisco Bay Trail Alignment Policy Number 11, FEIR pages 54 and 55;
- Existing General Plan Zoning Alternative, pages 242, 7.C;

VOTE: Ayes: Lee, Harris, Winston, Williams. Noes: Lopez, Rao, Finlay. Motion carried by a vote of 4-3.

Chair Finlay noted that the Planning Commission's decision may be appealed to the City Council by written notice thereof to the City Clerk's office by Monday, September 18, 2006 by 5:00 p.m., stating wherein the decision was in error.

COMMISSION BUSINESS

3. Reports of Officers, Commissioners and Staff

Janet Harbin reported that staff has discussed with the Design Review Board and Planning Commission regarding the possibility of holding a retreat on Friday, October 27, 2006 from 9:00 a.m. to 4:00 p.m. She said they were presently investigating locations for the retreat to be held.

Commissioner Harris said he reserved his comments on Item 2, and said he felt that a project that has 320 units could be built at the site; however, he did not feel at the present time that the EIR was defensible. **Commissioner Lee** echoed Commissioner Harris' comments.

The meeting was adjourned at 10:48 p.m.