

# **Public Comments**

## **Agenda Items 2 & 3**



*August 23, 2021*  
*City Council Meeting*

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**From:** Christine Boles <[REDACTED]>  
**Sent:** Monday, August 23, 2021 5:30 PM  
**To:** Dinah Verby  
**Cc:** Public Comment; Coffey, Sarah; Summer Lee; Rich Campbell; Bier, Mary; Vaterlaus, Sue; Beckmeyer, Sue; O'Neill, Mike; Bigstyk, Tygarjas  
**Subject:** Re: Corrections to 8-9-2021 City Council Minutes ( #2 on Consent Calendar tonight 8-23-21)  
**Attachments:** August 9th meeting minute errors.pdf; HARMONY APPELLANT Oral Comments for 8-9-21 appeal - with Christine's highlights.pdf

**[CAUTION: External Email]**

Dear Council, City Clerk, and staff,

I am currently out of town and have had limited access to the internet since the agenda for tonight's meeting was issued. As Dinah Verby mentioned previously, there are a number of errors and omissions in the meeting minutes for the Harmony One, Lot 3 appeal.

For one, my whole discussion of the HPD ordinance and the ways that disturbance areas are measured were left out, as was the discussion of how this project violated the ordinance. This is the critical part to my appeal, and I ask that the information be added to the minutes for accuracy. I have highlighted the missing text on the attached document, Harmony Appellants Oral Comments.

In addition there were several errors in transcribing both my, and my husband Bob Boles' testimony. See attached relevant pages in the August 9th meeting minute errors document.

Secondly, I would like to make sure you are all aware of this document, "City of Pacifica Collection System Master Plan Final Report from 2011."

<https://www.cityofpacifica.org/civicax/filebank/blobdload.aspx?blobid=5267>

This relates to consent agenda item #3.

Page 31 notes when the sewers were installed/rehabilitated, and the one near 700 Palmetto seems to be one of the newer lines at the time, put in between 1980 to 2011. Sewers should last much longer than this, so I am hoping for some clarification as to the reason for the failure of such a long section of such a large main. As a resident whose sewage flows through this area, I am very concerned. Can you also update us as to when the new sewer system report will be completed? I believe I heard Lisa Peterson mention the end of this year?

Thank you,

Christine Boles, Architect

**Beausoleil Architects**

[REDACTED]

Pacifica, CA 94044

[REDACTED]

[REDACTED]

*"Do your little bit of good where you are; it's those little bits of good put together that overwhelm the world." - Desmond Tutu*

On Mon, Aug 23, 2021 at 3:50 PM Dinah Verby [REDACTED] wrote:

Dear City Clerk and City Council,

On behalf of the appellants in the Ohlone Point Lot 3 Appeal, I am submitting a number of corrections to the Minutes from the 8-9-2021 appeal hearing. There are several errors and omissions.

Attached is a pdf of pages 36 and 37 of the draft minutes, showing my proposed corrections in red. In addition to the corrections noted in red, I request the following language be added to my comments on page 37:

In the third line from the bottom of Dinah Verby's comments, please insert the following language after the phrase "mentioning several thoughts on the subject"

"including, what is the standard for finding "significant hardship?" Will an applicant's mere desire to save money be sufficient? Will the City require financial disclosures as a condition of demonstrating economic hardship? And what will be the alternative required of applicants who demonstrate hardship? Will there be no green building standards at all?"

These are my verbatim comments and are very important to be included in the record.

I am also attaching for your reference a transcript of appellants' oral comments made that evening during our slide presentation. I understand that my co-appellant Christine Boles also has some corrections to offer, as a number of her comments were omitted from the minutes as well.

Thank you very much.

Respectfully,  
Dinah Verby

**CAUTION:** This email originated from outside of the City of Pacifica. Unless you recognize the sender's email address and know the content is safe, do not click links, open attachments or reply.

**Christine Boles, appellant,** stated that she was a licensed architect. She didn't have much time to review the staff report before the Planning Commission hearing in early April, but she made public comments regarding a few items that did not meet the original subdivision conditions of approval, i.e., mandatory green building aspects like the use of recycled gray water and that the subdivision, per condition of approval 31, was supposed to have an architectural control committee with a license architect and biologist reviewing and approving a plan for each home prior to coming before the Planning Commission. She also pointed out apparent floor area discrepancies on the drawings. She pointed out floor area discrepancies on design, but the project was approved with only Commissioner Ferguson voting no. She stated that, following the hearing, she was asked by former Mayor Digre to look into the project's Hillside Preservation District compliance. She stated that the HPD issues have been resolved through their productive collaboration with the owner, they feel it is important to document why the changes were required in order to explain the project revisions detailed in the staff report. She then mentioned the intent of HPD was to place special controls on proposed development within Hillside areas in the city to preserve and enhance the use of a prime resource and protect people and property from all potentially hazardous conditions on hillsides. *<insert highlighted text from appellant oral comments page 4>* She addressed some of the specifics of the ordinance to protect the hillsides. She stated that there are minor exceptions to the rules but none applied to this project. She stated that they explained to the owner their reasons for their appeal and as they went over the specifics that caused their concerns, he was surprised and stated that he didn't understand the scope of the HPD and, if he had, he would have gladly complied. They then worked together for several months, along with his engineers, to redesign the project and bring it into compliance. *<insert text from appellant oral comments page 5>* She stated that, as they resolved these issues with the owner, they removed them as terms of their appeal, and they thought it was important to tell the story of what happened in the hope that they can avoid this process with the next homes and future projects with HPD zoning. She stated that the present appeal is focused on the green building requirements and original conditions of approval for the subdivision which was intended to be a showcase of sustainability, and Summer Lee and Dinah Verby will present next.

**Summer Lee, appellant,** stated that the appellants are pleased that they have entered into an agreement with the project applicant to revise the project in a way that meets the requirements of the HPD ordinance. They are also pleased that the owner has agreed to comply with the original condition of approval 27 for this subdivision by building the project to attain all points necessary to achieve LEED Gold certification and 100 green points which may overlap. She stated that appellants with staff's recommendations, grant the appeals and to modify new condition No. 9 to conform to the parties' agreement. The urged Council to adopt Option B, for certain modifications. She stated that this project is the first of 11 or 12 homes to be built at Ohlone Point. They want to present the concerns that lead to the appeals so there will be consistency and clarity regarding the meaning of original condition 27 for all future homes. She pointed out that the basis of their appeal is that conditions of approval set legal standards which must be uniformly applied, and they are important as legal standards that a project must conform to in order to obtain approval by governing bodies. She stated that, in 2007 and 2015, there was a significant public process to come to a consensus on Ohlone Point, and the agreements from this process were hard won and included an agreement to build to environmentally sustainable standards. She explained that one reason they were here at this time as a few months ago, condition 27 was essentially gutted at a Planning Commission meeting with no discussion. She then introduced Dinah Verby.

**Dinah Verby, appellant,** stated that the original condition of approval 27 for the subdivision provided as proposed by the applicant, will be designed and constructed to attain all necessary points to achieve LEED certification and seek to obtain a gold standard whenever possible. She

City Attorney Kenyon stated that they were the appellants.

Councilmember O'Neill thanked them for the presentation. He referred to the last slide which mentioned removing significant hardships, and asked where that was in the staff report.

Ms. Verby stated that she was paraphrasing from the staff report and draft resolution on page 3 where staff has come up with a hardship exemption that would not require them to achieve LEED Gold which was new to them and they were questioning that exception.

Councilmember O'Neill stated that, in the motion that staff recommended, the appellants said they agreed with, and he asked if the significant hardship would have to be a separate motion.

Ms. Verby thought the City Attorney or staff should answer that.

Dep. Planning Director Murdock thought there were a couple of issues being discussed concurrently and it was difficult to separate them and focus on the distinctions. He stated that they had issues related to the specific project on lot 3, and the conditions of approval language recommended by staff, as appellant indicated, they agree with. He stated that there is a parallel issue where they are looking to apply whatever decision Council makes more broadly to the Harmony @ One subdivision and that is where staff is not in agreement with the appellant as it is based primarily on the language of condition No. 27 where it says that the applicant shall seek to obtain a gold standard whenever possible. He stated that, in the language of the original project approval, it suggests that there may be instances where it is not possible and that gets to a significant hardship that might prevent a particular developer from achieving LEED Gold certification and he thinks that is the issue that the appellants seem to be focusing on.

Councilmember O'Neill asked if they have ever invoked the significant hardship. He knew there were a few other units that are in plan review and are the people wanting to use that term.

Dep. Planning Director Murdock thought the answer is now as there are two sections of the Harmony @ One subdivision, as there is a single lot known as Lot D that is not part of the planned development and not subject to all the same requirements and is the only project under construction currently. They have not had any projects in the planned development portion of Harmony @ One or Ohlone Point proceed to the building permit phase so far and approvals for Lot 2, another project that they mentioned have expired and this can potentially be the first project for the planned development portion of the subdivision to advance to the building permit phase, depending on what action Council takes this evening.

Councilmember O'Neill asked what the significant hardship verbiage is for their part of the original conditions of approval back in 2007.

Dep. Planning Director Murdock stated that not expressly but he tried to put a different way of describing what the meaning is of the original condition 27 for the Harmony @ One project. The language in the original condition No. 27 indicates that they shall achieve LEED certification for the necessary points for LEED certification and shall seek to obtain a gold standard, i.e. LEED Gold, whenever possible. He stated that it suggests that there may be instances where it is not possible and that plain language of condition 27 did not go so far as to apply legal certification which he thought was an important feature, i.e., a distinction without much practical effect because the presumption is that people will build LEED Gold and two applicants thus far on Lot 2 and Lot 3 agree to build a LEED certification. They think, from a technical and legal point, it is

applicants that have six minutes of rebuttal time.

City Attorney Kenyon stated that they will ask the appellants first if they need any rebuttal time and after their rebuttal, they will move to the applicant and ask them if they have any time that they would like to use in rebuttal.

Mayor Beckmeyer stated that it was her understanding that they each have up to six minutes. She asked the city attorney if she was correct.

City Attorney Kenyon responded affirmatively.

Mayor Beckmeyer asked the appellants if they wished to use their rebuttal time, and if so, let her know who will be speaking.

Ms. Verby stated that they would use their rebuttal time and she thought it will be three of them, Mr. Campbell, Christine Boles and herself.

Mayor Beckmeyer asked if they want notice from City Clerk when they are a minute out from the end of their period.

Ms. Verby thought that will be fine.

City Clerk Coffey stated that she can share the screen with the timer for the rebuttal period as that may be better.

Mr. Campbell stated that he wanted to hit on one point, the significant hardship clause that has been introduced. He stated that, as a lawyer, he thought they should refrain from changing rule standards like that on the fly. He admitted that he hasn't had the time to research the difference between the legal standard of whatever is possible versus this new thing that has been introduced, significant hardship. He stated that, in law, you have different legal standards. He knows that, if you go to case law or statutes, they can mean different things. He stated that, from that point of view, he would be remiss as, if he were making this decision, he wouldn't want to change something like that on the fly. Whenever possible, context can mean something very different than significant hardship. He stated that there is a simple solution to this. He stated that, if they go to page B3 of the resolution, in the middle of the page is the original condition of approval and the language that says, as proposed by applicant, all the new buildings shall be designed and constructed to attain LEED and shall seek to obtain the gold standard whenever possible. Then, in the next paragraph, the last sentence has the clause, except for proven to be technically unfeasible or where another significant hardship with achievement points necessary for LEED Gold certification can be demonstrated by an applicant. He stated that he would strike that and replace it with whenever possible. It seems to him to keep the standard. Staff seems to be hard pressed to find a situation where you wouldn't get or achieve a LEED certification points. He thought it was a solution in need of a problem. He would strike the last phrase and be done with it.

Ms. Boles stated that her husband said everything she wanted to say. She stated that they are architects who work professionally designing high end sustainable homes. That is part of their business and has been for three <thirty> years and they build to LEED and <green point tated>standards all the time and it is not ever a hardship to build to those standards, unless you don't plan from the first to hold to those standards. She stated that you think about your siding <siting>, your orientation, saving, <?>when you lay out your building from the start. She didn't know the process for this particular



house, and they are going through their LEED certification now. She stated that, if you do it later, you might find out you have too many left <west>-facing windows and too much solar gain and you might have to change your design. Someone could argue that it is a hardship and you are going to lose your view, but that is not a hardship but something that comes and falls <?> with proper design from the beginning. She completely disagrees with the hardship clause and agrees with her co-appellants that it should be stricken.

Ms. Verby stated that she will sum up for her appellants and she would like to direct everybody and Council's attention to packet page 416 which is the draft resolution attachment A to the staff report. She wanted to sum up by being as clear as she can about the changes that they are asking for in the resolution. She stated that there is one very hyper technical thing she wanted to point out which is the first full paragraph on page 416 and refers to the rezoning of the original subdivision, and there is a little bit of an error there. It says the subdivision site was rezoned from A/B-5/HPD, and that should actually be it was rezoned from P-D/HPD. She discussed this with Dep. Planning Director Murdock and she thought he agrees that the property was not zoned agricultural and that was just a technical correction that should be made in the resolution. She stated further down on page 416, the passage that Mr. Campbell cited, middle paragraph, which starts with the requirement in COA 27 of the original approval is clear. She stated that there is a sentence that begins, "thus there is a presumption that projects in the planned development portion of the Ohlone Point subdivision, generally those areas other than lot B, will attain point necessary to achieve LEED Gold certification." She stated that they are asking them to strike the rest of that sentence that begins with "except" and instead just say whenever possible, which is actually what the condition of approval says. Beyond that, they are happy with the language further down on that page which was the proposed condition, adopt granting the appeal, including the condition that meets with the parties agreement. She stated that sums up their comments and their presentation. She thanked everyone and they hope that their deliberations will be short and sweet.

Mayor Beckmeyer thanked her and then stated it was the applicant's opportunity for rebuttal for up to six minutes.

Mr. Khosravi stated that there is no rebuttal from applicant.

Mayor Beckmeyer stated that closes the public hearing and stated that she wanted to check to see if there are any questions that Councilmembers have at this point.

City Attorney Kenyon stated that, before that, they should ask staff if they have any clarifying comments based on the testimony that they heard.

Mayor Beckmeyer thanked her, stating that was an excellent suggestion. She encourage staff to go ahead.

Dep. Planning Director Murdock stated that he had a few points at a high level. He didn't think it was fair to say that the public is doing our jobs. He stated that they have a lot of issues that they resolved and, if the public were to see the project that comes through the door as compared to the project that gets to hearing, they would recognize the amount of work that goes into it. He stated that staff is human, and they make mistakes. He stated that he can't speak to any particular issues because they were not raised in the appeals that they are hearing at this meeting and he thought it was unfair to make a one-sided presentation in that regard, but more broadly, they have heard the community interest in the say that the city evaluates the HPD. He stated that they are adjusting their procedures to make sure that they get clear and consistent

# City Council Harmony@1 Appellant Testimony

August 9, 2021

## Appellant Rich Campbell Testimony

### Initial Statement

Good evening honorable mayor Beckmeyer and members of the city council and Commissioner Godwin. My name is Rich Campbell. I was a planning commissioner for the City from 2007 until last year. I am one of the appellants, representing only myself.

As a preliminary matter I want to express my appreciation to Bijan Khosravi, the project applicant, for his efforts to resolve this matter. I believe Bijan has a genuine interest in ensuring the Harmony@1 development conforms with city code and is built in an environmentally sustainable manner. I also want to thank City staff for engaging with us on bringing this project back into conformance with City requirements.

### SLIDE 2 PLEASE

Allow me to provide some background. In late 2007, after several planning commission and city council meetings the Harmony@1 developer obtained approvals to undertake the subdivision. The hearings were standing room only. There was a lot of public interest, probably the most I have seen in my 13 years as a planning commissioner.

And why was that?

Because the development was a test of our HPD. Pacifica prizes its open space. It's why people love living here and invest in our town. And it's what makes Pacifica different then towns we are surrounded by.

### SLIDE 3 PLEASE

Turning to the map, the Light Green area on these maps indicate HPD zoning and the red indicates the Prominent Ridgeline where development should, generally, not occur pursuant to the HPD.

So, after multiple planning commission and city council meetings back in 2007 the City reached an agreement with the Harmony@1 developers that required, in relevant part here, to keep the homes off the HPD Prominent Ridgeline, and build to LEED. And since Pacifica has an inclusionary zoning ordinance, the master developer agreed to build two below market rate affordable homes and dedicate a two-acre lot near the post office on Roberts Road for affordable housing. We had a deal, a good deal in my opinion, and I voted for this project.

Soon after approval, we began to see the master developer back off the deal. The master developer asked to pay an in-lieu fee instead of building the affordable housing.



Next, we had the City agree to backing off the LEED requirement. I will leave the LEED issue to my co-appellants to discuss.

#### **SLIDE 4 PLEASE**

Then, we had the City agree to moving the proposed home from the location we'd agreed upon in 2007, off the Prominent Ridgeline, directly onto what we considered to be the Prominent Ridgeline back in 2007.

#### **SLIDE 5 PLEASE**

Now, as the City may explain, the Prominent Ridgeline likely encompasses more area than what was understood in 2007, and, admittedly, better lines need to be drawn that conform with contour lines. This whole area, it turns out, may be a Prominent Ridgeline. In any case, the City did not present any of its reasoning to the Planning Commission on April 5, 2021, none of it is in the record, and thus, you, City Council, as well as the Planning Commission were without the information you needed to make an informed decision.

So, I joined with my co-appellants in appealing the planning commission's decision to send this project to you for approval.

Fortunately, we are dealing with a very reasonable and patient project applicant. And the applicant has agreed to move the homesite back off what everyone understood in 2007 to be the Prominent Ridgeline, and to correct some HPD site coverage calculations that we also discovered during this process. These actions will serve to bring the project back into conformance with the HPD. And assuming the City finds these modifications acceptable, for these reasons I have dropped my appeal, with the exception of the LEED issue.

Thank you.

**SLIDE 6.** And now I'd like to introduce my co-appellant Christine Boles.

## **Appellant Christine Boles Testimony**

Slide 6

Good evening council members and staff, my name is Christine Boles and I'm a licensed architect. While I did not have much time to review the staff report before the planning commission hearing in early April, I did make public comments regarding a few items that did not meet the original subdivision conditions of approval. These include mandatory green building aspects like the use of recycled graywater, and the fact that the subdivision per COA 31 was supposed to have an architectural control committee with a licensed architect and biologist reviewing and approving the plans for each home prior to coming before the Planning Commission. I also pointed out apparent floor area discrepancies on the drawings. The project was approved nonetheless with only Commissioner Ferguson voting no.

Subsequent to the hearing, I was asked by former Council Member Sue Digre, to look into the project's Hillside Preservation, or HPD compliance. While the HPD issues have been resolved through our productive collaboration with the owner, Bijan Khosravi, we feel it is important to document to you why these changes were required in order to explain the project revisions detailed in the staff report.

Pacifica's HPD regulations are part of our municipal code, Article 22.5. The intent of HPD is clearly explained, *"to place special controls on any proposed development, public or private, within hillside areas of the City in order to:*

*a) Preserve and enhance their use as a prime resource;*

*(b) Help protect people and property from all potentially hazardous conditions particular to hillsides;*

While some of the discussion in the HPD ordinance is somewhat vague and up to interpretation by the decision-making bodies of the planning commission and ultimately you as the city council, the section regarding land coverage is quite clear and includes a precise mathematical formula and a graph.

Next Slide (7)

On the bottom of the graph is the average slope of the land which is calculated by the civil engineer based on the steepness of the site and the size of the parcel. A higher number means a greater slope, and increased danger, so the allowed development area naturally decreases. On a flat site with 0% slope, you are allowed to disturb 40% of the site. As you move to the right, and the slope increases, you are allowed to disturb less and less, and at about 38%, you are not allowed any disturbance. There are some minor exceptions to these rules but none of them apply to this project.

The HPD ordinance defines what counts as coverage, or disturbed area. *"site coverage (C) shall include all areas of the site occupied or covered by buildings, pavement, and **grading...****All areas not considered coverage shall remain undisturbed in their native or natural state.**"* This last phrase implies that landscaping also counts as disturbance.

Next Slide (8)

This is the drawing showing HPD disturbed area in the original application by Mr. Chavarria. On the top right are the calculations per the staff report.

For this project the HPD calculation shows that 23.53% of the site can be disturbed, or 14,720 square feet. This number is not in question. The staff report said the project as designed was 130s.f. over and called for paved areas of this amount to be removed. The next slides will demonstrate that the proposed HPD coverage was actually much greater.

Next Slide (9)

This slide shows the discrepancies in the drawings highlighted in yellow. The engineer's hardscape and landscape plans showed more paving and more retaining walls than were on his drawing with the calculations.

Next Slide (10)

This next drawing adds the site drainage, highlighted in blue, including flow through planters, underground retention tanks and bioswales; all these would require additional grading.

Next Slide (11)

And this last slide shows the extent of the landscaping work, which alters the terrain from “its’ native, natural state”. I haven’t done the math, but as you can see by the yellow, blue and green, the project as originally designed nearly doubles the allowable disturbance area.

After we filed our appeals, Bijan, the owner of the project, contacted us to try to understand our concerns. We went over them one by one, and he was genuinely surprised. He did not fully understand the HPD ordinance and said he would have gladly complied if he had known. The 5 of us worked together over the next several months, along with his engineer, to redesign the project and bring it into compliance.

Next Slide (12)

This revised HPD calculation diagram shows the new design with the house moved closer to the road, many of the drainage elements moved under the already disturbed driveway, and the additional landscaping minimized. You’ll note that the wing on the right was also rotated off of the prominent ridgeline. We’re grateful to Bijan for working with us, and glad that he feels the design was actually improved in the process. The major drawback to him was the delay, as he hoped to be under construction by now.

As we were able to resolve these issues with Bijan, we removed them as terms of our appeal, but thought it was important to tell the story of what happened in the hope that we can avoid this process with the next home, and with future projects with HPD zoning.

Our appeal today is focused on the green building requirements in the original conditions of approval for this subdivision, which was intended to be a “showcase of sustainability”, which Summer Lee and Dinah Verby will present next.

Next Slide (13)

## **Appellant Summer Lee Testimony:**

**[START AT SLIDE 13]**

Appellants are very pleased that we have entered an agreement with the Project Applicant to revise the project in a way that meets the requirements of the HPD Ordinance. . We are also pleased that Bijan has agreed to comply with Original Condition of Approval 27 for this subdivision by building the project to attain all points necessary to achieve LEED Gold certification, and 100 Green Points which may overlap.

Appellants agree with the staff recommendation to grant the appeals in part and to modify new COA 9 to conform to the parties’ agreement, and we urge the Council to adopt Option B with certain modifications. Because this project is the first of 11 or 12 homes to be built at Ohlone Point, we want to

present the concerns that led to the appeals so there will be consistency and clarity regarding the meaning of Original COA 27 for all future homes.

Next slide:

**SLIDE 14: COA 9 IN THE PLANNING COMMISSION RESOLUTION MATERIALLY ALTERS, CONFLICTS WITH AND/OR ELIMINATES ORIGINAL COA 27 BY ONLY REQUIRING THE PROJECT TO SCORE 100 GREEN POINTS RATHER THAN MEET THE LEED GOLD STANDARD REQUIRED BY THE CITY COUNCIL IN 2007 AND REAFFIRMED BY THE CITY COUNCIL IN 2015.**

[DV or Summer Remarks: The basis of our appeal is (then read the slide). Next slide]

**SLIDE 15: CONDITIONS OF APPROVAL SET LEGAL STANDARDS WHICH MUST BE UNIFORMLY APPLIED**

[DV or Summer Remarks: Why are Conditions of Approval important? Conditions of approval are legal standards that a project, and in this case, every development inside a subdivision, must conform to, in order to obtain approval by a governing body.

In 2007 and 2015 there was a significant public process to come to a consensus on Ohlone Point -- what would be major development project for Pacifica, both for the size of the land, and its visibility and impact on Pacifica's diverse and sensitive ecologies. The agreements made among the public, decision-makers, and developers that emerged from this process were hard won, and they included an agreement to build to environmentally sustainable standards.

Some of you present tonight deliberated and voted to approve these conditions of approval back in those years. We are here tonight because a few months ago, condition of approval 27 was essentially gutted at a planning commission meeting with no discussion. I will now introduce my co-appellant Dinah Verby.]

## **Appellant Dinah Verby Testimony**

**SLIDE 16: November 2007: Original COA 27 for the subdivision approval provided:**

**"As proposed by the applicant, all the new buildings shall be designed and constructed to attain all necessary points to achieve LEED certification and shall seek to obtain a Gold standard whenever possible."**

***(Source: Ohlone Point Subdivision Conditions of Approval 2007, Attachment I to current City Council Staff Report)***

[DV Remarks: Next Slide. Original COA 27 for the subdivision provided: **"As proposed by the applicant, all the new buildings shall be designed and constructed to attain all necessary points to achieve LEED certification and shall seek to obtain a Gold standard whenever possible."** LEED stands for "Leadership in Energy and Environmental Design" and is a green building certification program. The more points that are earned, the more sustainable the project. COA 27 was intended to apply to the entire subdivision. Next slide]

#### **SLIDE 17: WHAT ARE GREEN POINTS AND LEED?**

[DV Remarks: What Are Green Points and LEED? Both are rating systems that award points for different categories of green building. Green Points are generally considered to be less rigorous, more flexible standards, while LEED is literally the gold standard for projects in the top 1-5% of best construction practices, and is used to measure residential and commercial projects all over the world. Those standards are not on an honor system, but rather verified by a LEED professional or a Green Point rater. Then, if the builder so chooses, he or she can pay extra money to have a certification, which is essentially a plaque that shows to others your building has met those standards. Next slide]

#### **SLIDE 18: April 6, 2015 – Planning Commission approval for Lot 2**

- **Planning Commission unanimously ruled COA 27 requires LEED Gold**
- **“The home on Lot 2 shall be constructed to LEED Gold standard and achieve at least 100 points on the Green Point Rating System.”**

*(Source: Planning Commission Minutes, April 6, 2015)*

[DV Remarks: In 2015, the Planning Commission and City Council approved a project for Lot 2 of the subdivision proposed by Javier Chavarria, also the project engineer for Lot 3 in this case. Mr. Chavarria contended that he need only achieve 100 or more Green Points under the Build It Green rating system rather than LEED Gold. After extensive discussion, the Planning Commissioners (including my co-appellant Rich Campbell and current Councilmember Sue Vaterlaus) rejected Mr. Chavarria's argument and concluded unanimously that Original COA 27 required all the homes to be built to LEED Gold standard. Most of the discussion at that time centered around whether the developer had to actually get the LEED certification, but the requirement to meet LEED Gold standard was never in dispute. Ultimately, the Planning Commission decided that COA 27 required only the Gold points, and not the actual certification, and added a requirement to achieve 100 points on the Green Point Rating System. Next slide]

#### **SLIDE 19: July 13, 2015 – City Council Affirmed Planning Commission Decision for Lot 2**

- **City Council Resolution said the condition imposed by the Planning Commission was “to clarify condition number 27 of the original development approval...”**

*(Source: City Council Resolution No. 26-2015 7/13/2015)*

[DV Remarks: On July 13, 2015, the City Council (including Councilmember O'Neill) affirmed the Planning Commission decision for Lot 2 and ruled the home on Lot 2 shall be constructed to LEED Gold standard and achieve at least 100 points on the Green Point Rating System. The City Council's Resolution characterized this condition as “clarifying original condition 27.” Next slide]

**SLIDE 20: STAFF AGREES WITH APPELLANTS THAT CONDITION 9 OF PLANNING COMMISSION RESOLUTION FOR LOT 3 CONFLICTS WITH ORIGINAL COA 27 IN THAT IT ELIMINATES THE LEED STANDARD**

***(Source: Council Agenda Summary Report, Item 13, 8-9-2021)***

[DV Remarks: We are pleased that Staff agrees with us that COA 9 of the Planning Commission Resolution for Lot 3 conflicts with Original COA 27 in that it eliminates the LEED Standard. Next slide]

**SLIDE 21: APPELLANTS' CONCERNS FOR FUTURE DEVELOPMENT**

- **ORIGINAL COA 27 MUST BE CONSISTENTLY APPLIED TO ALL FUTURE HOMES AT OHLONE POINT.**
- **STAFF'S NEW "SIGNIFICANT HARDSHIP" EXCEPTION TO COA 27 CREATES POTENTIAL LOOPHOLES AND SHOULD BE REMOVED**

[DV Remarks: Appellants do have concerns about the future of this subdivision. Staff disagrees with our contention that the City Council's prior decision on Lot 2 was a legal precedent. So let's not speak in terms of "precedent" but rather in terms of consistency and uniformity in application of the conditions of approval. While it may be true that each Lot must go through a separate approval process, it is also true that Original COA 27 is intended to apply to all the lots in the subdivision. Appellants question how and why the same condition could be interpreted differently for each home. We ask that the City employ all means necessary to ensure that the LEED Gold standard required in Original COA 27 is applied to all future homes.

Appellants have additional concerns with staff's current interpretation. The City Council Staff Report states: "...there is a presumption that projects in the planned development portion of the Ohlone Point subdivision ... will attain points necessary to achieve LEED Gold certification except where proven to be technically infeasible or where another significant hardship ... can be demonstrated by an applicant."

We ask: How will this "presumption" be enforced in the future? What is the standard for finding "significant hardship?" Will an applicant's mere desire to save money be sufficient? Will the City require financial disclosures as a condition of demonstrating economic hardship? And what will be the alternative required of applicants who demonstrate hardship? Will there be no green building standards at all?

It is in the best interest of all concerned for the City to define these terms now, once and for all. We do not want to have to come back and appeal project after project.]