

Public Comments

Agenda Item 2



August 23, 2021
City Council Meeting

From: Dinah Verby [REDACTED]
Sent: Monday, August 23, 2021 3:50 PM
To: Public Comment
Cc: Coffey, Sarah; Christine Boles; Summer Lee; Rich Campbell; Dinah Verby
Subject: Corrections to 8-9-2021 City Council Minutes (#2 on Consent Calendar tonight 8-23-21)
Attachments: HARMONY APPELLANT Oral Comments for 8-9-21 appeal.pdf; Corrections to 8-9-21 Cty Council minutes380.pdf

[CAUTION: External Email]

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

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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.]

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. 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. 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

stated that LEED stands for Leadership, energy and environmental design and is a green building certification program. She stated that, the more point earned, the more sustainable the project. She stated that condition 27 was intended to apply to the entire subdivision. She stated that green points are generally considered to be less vigorous and more flexible while LEED is literally the gold standard for projects in the top 1-5% of best construction practices. LEED is used to measure residential and commercial projects all over the world. She stated that those standards are not on their honor system but rather verified by a LEED professional or green point rater. She stated that Planning Commission and Council approved the project for Lot 2 of this subdivision that was proposed by Javier Chavarria and the project engineer for Lot 3. She stated that Mr. Chavarria contended the he need only achieve 100 or more green points rather than LEED gold. She stated that, after extensive discussion, the Planning Commission which included Mr. Campbell and present Councilmember Vaterlaus, rejected Mr. Chavarria's argument and concluded that original condition 27 required all the homes to be built to LEED gold standards. She stated that most of the discussion centered on whether the developer had to get the LEED certification but the requirement to meet LEED gold was never disputed and the Planning Commission decided that condition 27 required only the gold point but not the actual certification and they added a requirement to achieve 100 points on the green point rating system. In 2015, Council, including present Councilmember O'Neill affirmed the Planning Commission decision for lot 2 and ruled that it should be constructed to LEED Gold and achieve at least 100 points on the green point rating system. Council's resolution from that decision characterized this condition as clarifying original condition 27. She stated that they are pleased that staff now agrees with them that condition 9 of the Planning Commission resolution for lot 3 conflicts with original condition 27 because it eliminated the LEED standard. She stated that the appellants have concerns about the future development in this subdivision. As much as they are pleased they have reached an agreement with the applicant in this case, they want Council to pay attention as to what this meeting means for the rest of the future of the subdivision. She stated that they know staff disagrees with their contention that Council's decision on lot 2 was a legal precedent. She asked that they not speak in terms of precedent but instead in terms of consistency and uniformity and application of conditions of approval. She stated that it may be true that each lot goes through a separate approval process that condition 27 is intended to apply to all the homes in the subdivision. Appellant's question of how and why the same condition could possibly be interpreted differently for each home and they are asking the city to employ all necessary to ensure that the legal standard required by condition 27 will be applied to future homes. She stated that thy also have a concern about a new interpretation by staff that they think created a loophole for a hardship exception. She mentioned the conditions but added that there is an exception where approval will be technically infusible where a significant hardship can be demonstrated by an applicant and they ask how that presumption will be enforced mentioning several thoughts on the subject and stated that they thought the exception should be removed in the best interest of all concerned so they don't have to come back to appeal each project on each lot.

City Clerk Coffey stated that they have two minutes remaining.

Ms. Verby stated that they have the final slide and she wasn't going to use that and would give their concluding remarks that are that they concur with staff's recommendation to grant the appeal in part and request adoption of Option B in the staff report to conform to the party's MOU. She promised the applicant that she would emphasize and clarify the parties' mutual understanding that the green points and LEED points may overlap. She thanked everyone and staff for their assistance in helping them come to this point.

Mayor Beckmeyer asked if Council had any questions for the applicant.