

**Planning Commission Minutes  
Community Chambers  
Wednesday, January 14, 2009, 7:00 p.m.**

Commissioners Present: Mark Braly(Vice-Chairperson), Greg Clumpner (Chairperson), Lucas Frerichs, Rob Hofmann, Kris Kordana, Mike Levy, Terry Whittier

Commissioners Absent: Ananya Choudhuri (alternate)

Staff Present: Katherine Hess, Community Development Director; Mike Webb, Principal Planner; Eric Lee, Assistant Planner; Lynanne Mehlhaff, Planning Technician

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**1. Call to Order**

Chairperson Clumpner called the meeting to order at 7:03 p.m.

**2. Approval of Agenda**

Commissioner Whittier moved approval of the agenda. Commissioner Kordana seconded the motion. The motion was approved by consensus.

**3. Induction of new Planning Commissioner**

Council Member Stephen Souza swore in Lucas Frerichs as a Planning Commissioner.

**4. Staff and Commissioner Comments (No action).**

Mike Webb, Principal Planner, asked for a report from any Commissioners attending any conferences at City expense per AB1234. Commissioner Whittier reported his attendance at the Planning Commissioner's workshop at Sonoma State University on December 6, 2008.

Vice-Chairperson Braly announced that a workshop by the Climate Action Team will take place next Thursday.

**5. Public Communications**

There were no public communications.

**6. Consent Items**

**A. Planning Commission Minutes of November 12, 2008**

**Action:** Commissioner Whittier moved approval of the minutes.  
Commissioner Hofmann seconded the motion.

AYES: Levy, Whittier, Hofmann, Braly, Kordana

NOES: none

Abstain: Clumpner; Frerichs

The motion passed 5-0-2.

**7. Public Hearings**

**A. Draft Environmental Impact Report (DEIR) for the New Harmony Affordable Apartment Community located at the southwest corner of Cowell Boulevard and Drummond Avenue;  
(Eric Lee, Assistant Planner)**

Public Hearing to consider the potential environmental effects of the proposed New harmony Affordable Apartment Community project. The project proposes to construct a 69-unit affordable apartment community on a vacant parcel in south Davis. The DEIR focused on the potentially significant impacts related to air quality and noise on future residents due to the site's proximity to Interstate 80. The public review period to receive comments on the New Harmony DEIR began on December 24, 2008 and will end on February 6, 2009 (a 45-day period).

Eric Lee, Assistant Planner, presented the staff report.

Eric Walther from Sierra Research, summarized how their company did a focused peer review of the air quality analysis, risk assessment and the Gauderman et al study published in the Lancet paper. He stated that the DEIR by the City has called it a potentially significant impact before mitigation. The use of tall evergreens and the use of indoor control systems with electrostatic filter systems would reduce the potentially significant impacts to a less than significant impact level. He concluded that the project would not lead to a significant impact.

Mike Webb, Principal Planner, explained the timeline of the process and receiving comments on the DEIR.

Commissioner Kordana stated three comments/concerns on the DEIR as follows:

1. The LSA study presented in June 2007 which focused mainly on cancer risks was a good study. It concluded that the project itself wasn't significantly impacted from the air quality around it and that the risk of developing cancer was only approximately nine in one million. But the topic of discussion was specifically lung development in children and that wasn't mentioned. The DEIR cites an update to the LSA study but the appendix only shows that it was a memo from LSA to the New Harmony housing company clarifying that the risk of cancer from the project was only nine in one million. That part of the DEIR evades the question of lung development in children.
2. The second part of the DEIR cites Dr. Thomas Cahill, a noted air quality expert at UC Davis, and a model he has for determining exposure to higher risks of pollutants. He presents a very good model and based on his expert opinions, his conclusions stated there are probably no significant impacts from the project. The problem is that the DEIR fails to address the fact that the Lancet study had a model and factored in the same things that Dr. Cahill factored in, amount of traffic, closeness to the freeway, and meteorological conditions. The study revealed that in all 12 communities studied, only when the model predicted the highest quartile of pollution was there an adverse impact. Yet independent to that, the Lancet study showed with each community studied, proximity to the freeway was an independent adverse risk factor for lung development in children. What was learned from that was that the model doesn't really work. The theories and predictions from the model don't translate to real world data and the DEIR does not address this. The DEIR takes local expert opinion and says that it trumps peer reviewed epidemiological data. This was a major flaw with the study.
3. Finally, Sierra Research did a peer review of the LSA Study and found it to be a good study. Commissioner Kordana's issues with the LSA Study are with how far it goes. It is very important not to mix the risk of cancer development with the concern of air quality impacts and proximity to the freeway on lung development in children. This is specifically not mentioned in the LSA Study. Furthermore, Sierra Research comes to the opposite conclusion after their review of the data from the researchers. The researchers concluded that there is a significant impact on lung development in children. So, after reviewing the data, Sierra Research states "the differences in lung function growth were mostly not statistically significant. This makes it difficult to apply the results of the study on a quantitative level to conclusion that New Harmony children ages 10-18 years would have decreased lung function growth." It is important to note that this is an opinion based on their review of the data. The Lancet Study article was peer reviewed by a number of people and by people who have no financial or political ties to any project. Other people outside of those peer reviews flagged this as a significant study. The New England Journal of Medicine commented that efforts to reduce respiratory impairment caused by air pollution should focus not only on regional air quality but also on more local factors such as proximity to freeways.

Commissioner Kordana said in summary the DEIR largely ignored the most current scientific peer reviewed data which indicated there was a significant adverse impact to lung development in children who live within 500 meters of a freeway. This project is about 90 meters from the freeway. The DEIR reached this conclusion based upon selective interpretation of the scientific data while ignoring other evidence that is clearly to the contrary. The Lancet Study should make us pause in making a decision to change current zoning which will result in knowingly putting children in harms way especially when alternatives exist.

Eric Walther of Sierra Research said the Lancet Study was a weak study with a weak correlation of the findings of the study.

Commissioner Levy stated concerns with the objectivity by Sierra Research and whether the project was being put forward in spite of health risks. It seemed the Sierra Research study was not purely peer reviewed but was somewhat argumentative. The objective analysis of the health effects on the people who may live in the development hasn't been given a complete and accurate point of view which may need to be fixed in the Final EIR.

Commissioner Hofmann asked staff to consider what overriding considerations would cause us to be compelled to place the project here. He said this wasn't necessarily the last best site left, so if this issue wasn't resolvable, what would make us want or need to put it here.

Mike Webb read the findings that are required for denial of an affordable housing project from *California Planning and Zoning Laws, Section 65589.5*.

Chairperson Clumpner asked if there was any data that was specifically gathered from the New Harmony site itself. Sierra Research stated that there has been no data gathered from the site itself. All the data has come from other locations which Sierra Research evaluated the relativeness of the data.

Commissioner Levy said the Air Resources Board recommends a site specific study if the project is going to be within 500 feet of a freeway. Sierra Research clarified that it was to be a "site specific analysis" for over a year by using meteorology of the site, geometry of the site and roadways, adjacent traffic data to the site and do a site specific dispersion modeling analysis. This approach would be cost prohibitive.

Commissioner Levy was not convinced that Sierra Research's conclusions were supported by the record before the Commission. He didn't see the data to support the conclusion that there was a preponderance of evidence that the impacts were less than significant with mitigation. He said the Commission would have no right to adopt that finding and would have to adopt a finding that it was potentially significant even with mitigation because of imperfect data.

Commissioner Hofmann was concerned with Dr. Cahill's study in terms of his assumptions on traffic speeds on I-80. Traffic speeds are nowhere near what they were before and projecting in the future, the traffic is getting worse, particularly on Fridays. There should be current data on this from the site.

Chairperson Clumpner opened the public hearing.

Whit Manley, attorney representing the applicant of SMHA, addressed some of the concerns the Commission stated. He said the judgment could be made that the impacts were less than significant and the project could be approved without overriding considerations. He stated the applicant approved all of the mitigation measures set forth in the DEIR.

Dan Brugger, a physician in Davis, voiced concerns about the potential health aspects in regards to the project. He didn't feel health had been adequately addressed by the DEIR. He shared Dr. Kordana's concerns and the preponderance of evidence that he had seen was that there were multiple health impact issues on children and adults due to the location of the project.

Rachel Iskow, Executive Director of Yolo and Sacramento Mutual Housing Association, said these three studies seem redundant. She said they commissioned a site specific study, a health risk assessment – the industry standard, and the results were that the health effects of the freeway were not significant due to the direction of the prevailing winds and other factors. It is their opinion that there was not substantial evidence of adverse impact. State law requires that if there is substantial evidence of an adverse impact and if the impacts can be mitigated, then there is no basis for denial under that particular finding for an affordable housing project. Therefore they designed the project with mitigation measures in tact so that any adverse impacts or notion of an adverse impact are mitigated.

Wendy Carter, project manager of New Harmony, said the EIR was a lengthy and expensive process. She said to state that this project has significant impacts, creates a huge policy impact. There are 78 units of housing that were planned in the Housing Element that could be subject to denial under the same type of policy. The 78 units are in addition to the 69 units of New Harmony. This is a huge implication and concern to us.

Sandra Homamee, Program Director and Community Organizer with Sacramento Housing Alliance, said this was a good project which will provide much needed affordable housing for Davis. If they were concerned there was an environmental justice issue, they wouldn't support the project. There is a critical need for this project and they hope the project moves forward without delay.

Tori Bovard, resident nearby to the proposed development, said it was important to note that the Lancet study was a well controlled longitudinal study and not a computer simulation. In

other words, the findings of the study were evidence based and based on real people and real outcomes. Furthermore, the results of the study clearly indicated that risk decreases exponentially as the distance from the freeway increases. The DEIR didn't ignore the study but it dismissed the study and instead cited the need for the site specific study in order to base its conclusions. But the DEIR missed the point because the point of the Lancet Study was that the findings are robust and independent of regional air quality. This is one of the things that Gaudermann used, he used regional data from several different areas in southern California and some of these areas have fewer car counts than we do here. It was a gross misrepresentation this evening when they said "that this was all the smog filled pollutant area." That was simply not the case. The DEIR also dismisses the measurement of lung function and development as an indicator of respiratory health in children. She said "you can't dismiss lung development as an indication of respiratory health."

Mindy Romero, SMHA Board member and resident in Davis, pointed out that Sierra Research was the third report that had concluded that there are no significant health risks to New Harmony residents or children. There are only concerns over the health risks in the Lancet journal. She felt there wasn't sufficient evidence to deny the project to future residents who could live there. The project was desperately needed and it would take a significant amount of time before another project could be developed like this.

Chairperson Clumpner closed the public hearing.

Commissioner summary comments to the DEIR:

- The rationale used to make the final determination that the health risks are insignificant is based upon subjective interpretation of the best available scientific data. However, the DEIR lacks objectivity and it fails to consider alternative peer reviewed scientific data which reaches an opposite conclusion to that reached in the DEIR. The DEIR reaches the conclusion that health risks are insignificant but this is based on expert opinion which is contrary to the epidemiologic data which is peer reviewed and is before us tonight. The peer reviewed Lancet article is a powerful epidemiologic study; no study is perfect and we have to make decisions on the available data before us. The Lancet study demonstrates a significant adverse impact to lung development in children which occurs between 10 and 18 years of age and which is with them for life. The modeling aspects which are purported to potentially mitigate adverse impacts are shown by the epidemiologic data not to be that way. The DEIR conclusion is in error.
- The DEIR is not adequate due to lung function and development in children. The mitigations proposed have not been shown to be adequate with respect to the issues of lung function and development raised in the Gauderman et al study and similar studies.
- The DEIR as presented fails to demonstrate and adequately support its conclusion that no such impacts exist with being 500 feet from the freeway at this particular site.

- Concerned that the DEIR seems to be a restatement of a previous study and suspect there could be other experts out there to do a true peer review in the industry that may come up with different conclusions.
- The DEIR failed to fully ventilate the information with the Lancet Study. Sierra Research stated they disagreed with the conclusion of the Lancet study; felt they were coming in with a subjective opinion on the whole issue to begin with.
- Pointed out that Dr. Brugger today submitted more information about health impacts from studies that were attached to his email. There could be more information out there on health impacts related to distances with the freeway that the DEIR hasn't exhausted.
- The City Council will now have all the information with comments to the DEIR to now consider the EIR as adequate as written.
- This is really a judgment call that has to be made on the DEIR since there are no thresholds currently other than a guideline from the ARB for stationary sources and none for mobile sources. In this instance, my judgment would be that the impact is less than significant based on the multiple levels of findings from Sierra Research and previous findings thus the DEIR is adequate.
- Additionally, there are very specific and discreet findings to deny affordable housing projects in state statute per *California Planning and Zoning Laws, Section 65589.5*. None of those four reasons listed for denial exist for this project proposal so it is an adequate EIR.
- Don't want this to appear that we are against affordable housing; we have approved a fair number of affordable housing projects. Hopefully, there will be more affordable housing projects brought forward.

Webb announced that comments can be sent in on the DEIR up until 5:00 p.m. on February 6, 2009.

Chairperson Clumpner requested a report back from the Natural Resources Commission meeting on their comments of the DEIR. Staff agreed.

## **8. Business Items**

### **A. Selection of Chairperson and Vice-Chairperson**

Commissioner Kordana nominated Chairperson Clumpner to continue as Chairperson. Commissioner Whittier seconded the motion. The motion passed unanimously by consensus 7 to 0.

Commissioner Levy nominated Vice-Chairperson Braly to continue as Vice-Chairperson. Commissioner Kordana seconded the motion. The motion passed unanimously by consensus 7 to 0.

## **9. Informational Items**

**A. Planning Commission Schedule**

Commissioner Levy pointed out that April 8<sup>th</sup> was the first night of Passover; requested the meeting on that night be switched.

**10. Staff and Commissioner Comments (continued).**

Commissioner Frerichs was welcomed and given a Planning Commissioner's book from Commissioner Whittier.

**11. Public Communications (continued).**

There were no public communications.

**12. Adjournment to the next regular Planning Commission meeting to be held on Wednesday, January 28, 2009 in the Community Chambers (23 Russell Boulevard).**

The meeting was adjourned at approximately 10:00 p.m.