

We are appealing the recent Planning Commission decision authorizing Trammel Crow Residential and the Oakland Housing Authority to demolish the building located at 2935 Telegraph Ave. (former Courthouse Athletic Club) for the following reasons:

1. The proposed construction of one- two- and three-bedroom rental units for low-income residents is substantively different from the original plans for the property that the Planning Commission approved, and had been presented to existing residents and homeowners in the neighborhood. As such, the new proposal must undergo a separate process of review and approval.
2. Neighbors, and even members of the Planning Commission, feel that they have not paid enough attention to the historic value of the existing property, and additionally OHA and TCR have failed to complete a review of the property under Section 106, as would be required if OHA uses federal funds to finance the project .
3. Trammell Crow Residential (TCR) has acted in bad faith in maintaining its property over the last 6-8 months, and through its purposeful neglect of the property, causing the property to deteriorate potentially beyond repair.
4. TCR has misled the community about its plans for the property after having garnered the support of neighborhood groups, homeowners, and residents to help its application, and prevent neighborhood obstruction, for the various permits required to move forward with the demolition and subsequent construction.

To the first point, it should be noted that the original plan for the site—the plan approved by the Planning Commission—was to build and sell market-rate studio, one- and two- bedroom condominium units, with ground-floor retail. To that end, TCR conducted several community meetings to display plans for the building, and address community concerns. At one point, representatives requested and were granted an opportunity to speak directly to the homeowners immediately across the street from the project during a meeting of the 532 30th Street Homeowners Association.

Throughout the series of meetings, there were plenty of skeptical and critical opinions voiced. Throughout, TCR vigorously defended their project, on several points, including but not limited to:

1. Funding for the project was secure, and construction would be completed regardless of the real estate climate;
2. TCR was committed to building a high-quality, market-rate project that would entice new residents, and ultimately prove to be an asset to the community; and
3. TCR was fully committed to community input, and was making efforts to be communicative with neighbors, and sensitive to their needs.

On the strength of those arguments and repeated assurances that the funding for the project was secure, and that they would it build to completion, TCR won over some initial critics of the proposal.

Just now, neighbors are finding out that the plan for small, market-rate condominiums for purchase will be replaced with a plan that alters not only the physical makeup of the building, but also the target residents. Most significantly, according to the April 1, 2009 the Oakland Planning Commission Agenda, the Commission was unaware of the pending purchase of the site by the Oakland Housing Authority and design change until some date after February 4, 2009. Gone are plans that would entice first-time homeowners interested in investing and building up a long-neglected neighborhood. In its place, TCR and Oakland Housing Authority are planning to build larger units (one- two- and three-bedroom units) targeted at low-income renters.

We feel that these design and project changes will have a profound effect on the neighborhood, and in fact, the project is now tremendously different from the one that the Planning Commission approved. Instead of a property targeted at homeowners, who will have a stake in both maintaining their own property, and in creating and maintaining a safe and clean neighborhood, we are left with a huge population of renters who will not have the same sense of responsibility to the property, or to the long-term success of the neighborhood. Additionally, the new larger units will bring a larger number of vehicles into the vicinity, but the according to TCR and OHA representatives, there are no plans to increase the number of parking spaces built beyond the single space per unit that was approved in the original plan for the property, which was based on smaller units with fewer residents. These are substantial changes to the original plans that were approved by the Planning Commission.

This opinion is one that was shared by Commissioner Boxer at the April 1, 2009 Planning Commission meeting, and it should be noted that Commissioner Boxer voted against the motion to approve the demolition of the Courthouse, saying that he felt the new project was substantially different from the original proposal. Chair Calbruno also expressed similar reservations at that meeting.

There have been no formal plans submitted to the Planning Commission for the proposed changes. Commissioners and the public were, and remain, unaware of the most basic features of the changed project. When asked about the number and breakdown of the proposed units, an OHA representative replied “um, about 115” and did the math in her head to come up with the number of three-bedroom units. No plans were made available, or ever submitted for review by the public or to the Planning Commission. Yet TCR and OHA asked the Planning Commission to officially support a project that amounted to a handful of scarce details pulled from someone’s memory.

There has been zero outreach to the community about planned changes. Moreover, several Commissioners at the April 1, 2009 Planning Commission meeting expressed feeling uncomfortable supporting a project that they had not scrutinized or reviewed. Neither the Planning Commission, nor interested community members have any idea of the plan, beyond the vague statements offered by an OHA representative at the meeting. Yet somehow, the Planning Commission still voted to carry on with the project, despite having literally no documentation or specifications of the project itself.

Bringing more OHA-managed low-income housing to the neighborhood will increase traffic congestion in the neighborhood and bring with it the crime and blight associated with OHA

properties in general. Given the current number of lawsuits against the Oakland Housing Authority for complete and utter failure to maintain its existing properties, and the state of the more than 100 OHA properties in the immediate neighborhood (see attached), the community has serious reservations about the OHA's ability to be a good neighbor and responsible owner. Additionally, given that there has been no opportunity for public comment about this proposed project, and virtually no written documentation about it exists, we are concerned about OHA's ability to be anything other than a tremendous liability to the community.

To our second point, that not enough attention has been paid to the value of the existing structure, we simply need to point to comments made by several Commissioners at the 4/1/09 Planning Commission meeting. Unfortunately, due to the timing requirements of this appeal (10 days), we cannot obtain minutes of that meeting in order to cite more fully those comments. Nevertheless, Commissioners stated that they wish they had paid more attention to the existing structure when the first proposal was approved, and more of an effort made to find a way to reuse it, in part or in whole. That being the case, this is a perfect opportunity to give the existing structure another chance. There is strong support from neighborhood residents for some sort of creative re-use of the existing buildings. Regardless, given the reservations expressed by many on the Planning Commission and in the community, we feel that these changes in the project represent a good opportunity to re-think options for what has become an Oakland landmark, in the truest sense of the word. It does serve as a meaningful marker for thousands of Oakland residents, and it does deserve some additional consideration.

Further the OHA representative said at the Planning. Commission meeting on 4/1/09, OHA will be applying for and using stimulus funds (i.e. "America Recovery and Reinvestment Summary") to finance the project. The Planning Commission voted not to allow demolition of the Courthouse until close of escrow with OHA. As a result OHA will have to ante up federal (stimulus) funds, therefore Section 106 will be required. We have recently confirmed with State Office of Historic Preservation which has jurisdiction, and it was confirmed that the use of federal funds will require 106 review.

The following language is from the June 14, 1991 Martin Luther King Jr. Community Plaza (as the old Merritt College project was called by the City) Section 106 Historical Documentation by Brady and Associates, Planners and Landscape Architects, and it also applies in the current situation:

Intent of the Section 106 Process

The Section 106 review process is mandated by the Federal National Historic Preservation Act of 1966, which requires any agency with jurisdiction over a federally-assisted undertaking to take into account the effects of the agency's undertakings on properties included in or eligible for the National Register of Historic places, and to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. Section 110(f) of the Act also requires that harm to any National Historic Landmark be minimized through appropriate planning and actions.

The Section 106 process...is intended to identify potential conflicts between historic preservation concerns and the needs of Federally-sponsored or -assisted undertakings, and to help to resolve such conflicts in the public interest.

Applicability of the Process to the Project

The Section 106 process applies to all projects that are sponsored by the Federal government, **or which have been assisted through receipt of Federal funds** [emphasis added].

Codification of the Process under 36 CFR Part 800

...The major steps required under 36 CFR Part 800...may be summarized as follows, with terms in quotations indicating terms specifically defined in the code:

- * Description of the project and determination that the project constitutes an "undertaking."
- * Determination of the "Area of Potential Effect" of the undertaking.
- * Identification of properties eligible for the National Register of Historic places within the APE.
- * Determination of "Effect," including whether or not the effect will be "adverse."
- * Notification of the SHPO and the Council and **public review** [emphasis added]
- *Negotiation of a Memorandum of Agreement (MOA) with the SHPO and the Council

Future Steps in Project Review: After the publication of this report, the proposed project will be subjected to substantial environmental and historical review **before formal project approval or construction can occur** [emphasis added]. These steps will include all required contacts and negotiations with SHPO (and) the Council...Specific steps for negotiation and review will include:

...Consultation with the SHPO and the Council to seek ways to avoid or reduce the effects on historic properties."

It must be noted that Trammell Crow Residential has seriously neglected its duties as property owner. Since the building changed hands, it has deteriorated at an accelerating rate into its current state of blight. At present, gang-related graffiti is scrawled on the walls, windows are shattered and missing, and there is a constant flow of people in and out of the building, either squatting overnight, or stealing copper pipe and other valuable raw materials. At the 4/1/09

meeting, TCR representatives expressed the opinion that—since the building has fallen into such a state of disrepair—expediting the demolition of the building would be the best solution. As Noted by the Planning Commission, the fact that TCR has not protected their property is not enough of a reason to expedite the demolition. The fact that TCR has been so negligent has raised some suspicion that they have allowed the property to deteriorate as a strategy for making demolition more attractive to nearby residents. Purposeful neglect should not be rewarded.

There is another similarity between the Courthouse Building, and the (potential) use of federal funds triggering Section 106 review in the event of the purchase of the property by the Oakland Housing Authority, and the Old Merritt College (Martin Luther King Plaza) project, which was purchased with federal funds, hence the 106 requirement.

The Old Merritt College Building, while owned by the City of Oakland, was stripped of metals and other salvageable materials, unsecured and allowed to be squatted in, set fire to, and left exposed to the elements. A community group, the Ad Hoc Committee to Save the Old Merritt College Building (later NOVA), represented by Attorney Susan Brandt-Hawley, took the City to federal court. She argued that ongoing deterioration was "demolition by neglect" was a circumvention of environmental review, which had yet to occur. The City of Oakland settled the lawsuit, took immediate steps to secure and weatherproof the building, and began the process of renovating the building.

If Oakland Housing Authority pursues purchase of the Courthouse Building, Section 106 review (as well as, most likely, an addendum to the completed EIR) will be required. As codified by the published decision by Judge Marilyn Hall Patel in the Old Merritt College case, demolition by neglect prior to completion of environmental review is illegal.

As for our third point, that TCR has been misleading the community with regard to its plans for the building, we think back to 2006 and 2007, when TCR was actively participating in a series of community meetings about the project. They repeatedly assured concerned neighbors that funding for the project was in place, and regardless of other factors, the company was 100 percent committed to the construction and selling of market-rate condominiums at the site. At that time, they were responsive to neighbors, and reasonably conscientious about maintaining the property itself. In September of 2008, TCR representatives approached several neighbors about writing letters in support of their efforts to garner approval to demolish the existing structure before final permits were issued for the new project. Given TCR's history up to that point, several residents wrote letters of support as requested. Unfortunately, that was the last any of us heard from TCR, until hearing of the plans for OHA-managed low-income housing at the April 1, 2009 Planning Commission meeting.

Given OHA's dubious track record, we are not surprised that TCR has tried to keep their new plans for the site as hidden as possible. We strongly believe that this speaks to their tacit understanding that the new project is fundamentally different than what was originally approved, and substantially different than the tale of neighborhood participation and growth that TCR had spun in the community and to the Planning Commission.

Additionally, we have heard from at least one resident who attests that Mr. Alex Waterbury of TCR mentioned to him over the phone in January of 2009, that major changes were coming to the Courthouse project, and requesting that this detail be kept quiet. Recently, TCR made the claim that the changes to the Courthouse are so recent that they have not had time for any community input or feedback, but given the circumstances, it is clear that TCR in fact had plenty of advance knowledge of potential changes, but instead purposely chose to keep details quiet, because they know that the new project is both significantly different than what they presented to the Planning Commission and the community, and that the community would not be in favor of the proposed changes.

We hope that members of the City Council will recognize what the Planning Commission has failed to acknowledge, namely that the changes to the Courthouse project by TCR and the Oakland Housing Authority are fundamental, substantial, and warrant additional scrutiny and review. The project violates both the letter and the spirit of TCR's original project in ways that will negatively affect the surrounding community, and the destruction of historic property will impact the physical and cultural landscape of Oakland as a whole. The Planning Commission and the community at large need to be given the opportunity to fully evaluate and give feedback on the project as it stands now, rather than base decisions on the hearsay and vague statements that have characterized the limited information available about the new OHA project on this site.

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