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City Attorney's Office

# OAKLAND CITY COUNCIL

RESOLUTION NO. 88073 C.M.S.

INTRODUCED BY COUNCILMEMBER [IF APPLICABLE]

**A RESOLUTION DENYING THE APPEAL (APL19013) BY EAST BAY RESIDENTS FOR RESPONSIBLE DEVELOPMENT (EBRRD) LED BY ADAMS BROADWELL, JOSEPH & CARDOZO AND UPHOLDING THE PLANNING COMMISSION'S ENVIRONMENTAL DETERMINATION AND APPROVAL OF A MAJOR CONDITIONAL USE PERMIT FOR BUILDING CONSTRUCTION OVER 200,000 SQUARE FEET AND REGULAR DESIGN REVIEW FOR THE PROJECT LOCATED AT 1750 BROADWAY, OAKLAND CA (PLN18369).**

**WHEREAS**, the Project applicant, Rubicon Point Partners, filed an application on September 4, 2018 to construct a 37-story building with 307 market-rate residential units, approximately 5,000 square feet of retail space, and a five-level parking garage for 170 parking spaces to be accessed from 19<sup>th</sup> Street, and located at 1750 Broadway, Oakland, CA (PLN18369) (the Project); and

**WHEREAS**, the Design Review Committee (DRC) reviewed the application at its January 31, 2018 and November 28, 2018 meetings and considered the design review aspects of the Project at its duly noticed public meetings, and forwarded the application to the Planning Commission; and

**WHEREAS**, the City's Planning Commission took testimony and considered the Project at its duly noticed public meeting of March 20, 2019; adopted California Environmental Quality Act (CEQA) Findings related to the Project; and approved 1) A Major Conditional Use Permit (CUP) for Building Construction over 200,000 square feet, and 2) A Regular Design Review for the Proposed Project; and

**WHEREAS**, on April 1, 2019, an appeal of the Planning Commission's approval and a statement setting forth the basis of the appeal was timely filed by East Bay Residents for Responsible Development (EBRRD) led by Christina Caro (Appellant); and

**WHEREAS**, after giving due notice to the Appellant, the Applicant, all interested parties and the public, the Appeal came before the City Council at a duly noticed public hearing on February 4, 2020; and

**WHEREAS,** the Appellant, the Applicant, supporters of the application, those opposed to the application and interested neutral parties were given ample opportunity to participate in the public hearing by submittal of oral and/or written comments; and

**WHEREAS,** the public hearing on the Appeal was closed by the City Council on February 4, 2020; now, therefore be it

**RESOLVED:** That, the City Council hereby independently finds and determines that the requirements of CEQA Guidelines Sections: 15183 - Projects Consistent with a Community Plan, General Plan, or Zoning; 15183.3 - Streamlining for Infill Projects; and 15332 - Urban Infill Development. Each of the foregoing provides a separate and independent basis for CEQA compliance; and be it

**FURTHER RESOLVED:** That, the City Council, having heard, considered and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Application, the Planning Commission's decision, and the Appeals, finds that the Appellant has not shown, by reliance on evidence already contained in the record before the City Planning Commission, that the Planning Commission's decision on March 20, 2019 was made in error, that there was an abuse of discretion by the Planning Commission or that the Commission's decision was not supported by substantial evidence in the record, based on the March 20, 2019 Staff Report to the Planning Commission and the February 4, 2020 City Council Agenda Report hereby incorporated by reference as if fully set forth herein. Accordingly, the Appeal is denied, the Planning Commission's CEQA Determination, approval of the major CUP, and Regular Design Review findings are upheld, based upon the March 20, 2019 Staff Report to the City's Planning Commission and the February 4, 2020 City Council Agenda Report, each of which is hereby separately and independently adopted by this City Council in full; and be it

**FURTHER RESOLVED:** That, in support of the Planning Commission's decision to approve the Project, the City Council affirms and adopts the March 20, 2019 Staff Report to the City's Planning Commission (including without limitation the discussion, findings, conclusions and conditions of approval each of which is hereby separately and independently adopted by this Council in full), as well as the February 4, 2020 , City Council Agenda Report, (including without limitation the discussion, findings, conclusions and conditions of approval, each of which is hereby separately and independently adopted by this Council in full), except where otherwise expressly stated in this Resolution; and be it

**FURTHER RESOLVED:** That, the City Council finds and determines that this Resolution complies with CEQA and the Environmental Review Officer is directed to cause to be filed a Notice of Exemption (NOE) and Notice of Determination (NOD) with the appropriate agencies; and be it

**FURTHER RESOLVED:** That, the record before this Council relating to this application and appeal includes, without limitation, the following:

1. The application, including all accompanying maps and papers;
2. All plans submitted by the Applicant and their representatives;

3. The notice of appeal and all accompanying statements and materials;
4. All final Staff reports, final decision letters and other final documentation and information produced by or on behalf of the City, including without limitation and all related/supporting final materials, and all final notices relating to the application and attendant hearings;
5. All oral and/or written evidence received by the City's Planning Commission and City Council during the public hearings on the appeal; and all written evidence received by relevant City Staff before and during the public hearings on the application and appeal; and
6. All matters of common knowledge and all official enactments and acts of the City, including, without limitation (a) the General Plan; (b) Oakland Municipal Code; (c) Oakland Planning Code; (d) other applicable City policies and regulations; and, (e) all applicable state and federal laws, rules and regulations; and be it

**FURTHER RESOLVED:** That, the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) Department of Planning & Building, Bureau of Planning, 250 Frank H. Ogawa Plaza, 2<sup>nd</sup> floor, Suite 2114, Oakland CA.; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1<sup>st</sup> floor, Oakland, CA; and be it

**FURTHER RESOLVED:** That, the recitals contained in this Resolution are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA,

MAR 03 2020

PASSED BY THE FOLLOWING VOTE:

AYES - ~~MORTON AND BISHOP~~ GALLO, GIBSON MCELHANEY, ~~WATSON~~ REID, TAYLOR, ~~WATSON~~ AND PRESIDENT KAPLAN *~5*


NOES - *1 Bas*

ABSENT - *0*

ABSTENTION - *1 Kalb*

*Excused - 1 Thad*

ATTEST:

  
 LATONDA SIMMONS  
 City Clerk and Clerk of the Council of the  
 City of Oakland, California