



**TOWN OF TIBURON
PLANNING COMMISSION
1505 Tiburon Boulevard
Tiburon, CA 94920
Action and Approved Minutes
Regular Meeting
June 8, 2005 – 7:30 PM**

ACTION MINUTES

CALL TO ORDER AND ROLL CALL 7:35 PM

Chairman Collins, Vice Chairman Kunzweiler, Commissioner Aguirre, Commissioner Fraser, Commissioner Snow **Commissioner Kunzweiler Absent**

ORAL COMMUNICATIONS

Persons wishing to address the Planning Commission on any subject not on the agenda may do so under this portion of the agenda. Please note that the Planning Commission is not able to undertake extended discussion, or take action on, items that do not appear on this agenda. Matters requiring action will be referred to Town Staff for consideration and/or placed on a future Planning Commission agenda. Please limit your comments to no more than three (3) minutes. **There Were None**

COMMISSION AND STAFF BRIEFING

Staff Update
Commission Information Items

PUBLIC HEARING

1. REVIEW OF DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR) FOR A PROPOSED FIVE LOT RESIDENTIAL DEVELOPMENT (LING PRECISE DEVELOPMENT PLAN); FILE #30302; END OF STONY HILL ROAD; Joe Ling, et al, Owners; Assessor's Parcel No. 55-261-10 (CONTINUED FROM MAY 11, 2005) **Consultant Directed to Prepare Final EIR 4-0**
2. 2000 PARADISE DRIVE; CONDITIONAL USE PERMIT #10411; REQUEST TO EXPAND AN EXISTING RESTAURANT (CAPRICE RESTAURANT); Point Tiburon Plaza, Inc., Owners; Mogens Bach, Applicant; Assessor Parcel No. 59-172-46 (CONTINUED FROM APRIL 13, 2005) **Staff Directed to Return with Resolution Denying Project 4-0**
3. ZONING ORDINANCE TEXT AMENDMENT; FILE #Z2005-01; ADD SECTION REGARDING ECONOMIC EXCEPTIONS TO ADDRESS INSTANCES WHERE A "TAKING" OF PROPERTY IS ALLEGED BY APPLICANT
Recommended Adoption to Town Council 4-0

MINUTES

4. Planning Commission Minutes Regular Meeting of May 11, 2005

Approved 4-0

ADJOURNMENT 10:45 PM

**APPROVED MINUTES NO. 916
PLANNING COMMISSION
June 8, 2005
Regular Meeting
Town Council Chambers
1505 Tiburon Boulevard, Tiburon, California**

CALL TO ORDER AND ROLL CALL

Present: Chair Collins, Commissioners Aguirre, Fraser and Snow

Absent: Commissioner Kunzweiler

Staff Present: Community Development Director Anderson, Planning Manager Watrous and Meeting Recorder Flanagan

ORAL COMMUNICATIONS

There were none.

COMMISSION AND STAFF BRIEFING

Staff Updates:

Community Development Director Anderson reported that the General Plan DEIR will be heard at the June 22 meeting and that is the only item scheduled at this time. He said that the Curves Fitness use permit review will probably not be heard until July 13, 2005.

Commission Information Items:

Chair Collins welcomed Commissioner Aguirre to the Commission.

PUBLIC HEARING

- 1. REVIEW OF DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR) FOR A PROPOSED FIVE LOT RESIDENTIAL DEVELOPMENT (LING PRECISE DEVELOPMENT PLAN); FILE #30302; END OF STONY HILL ROAD; Joe Ling, et al, Owners; Assessor's Parcel No. 55-261-10 (Continued from May 11, 2005)**

Planning Manager Watrous reviewed the Staff report. In his role as Environmental Coordinator, he recommended that the EIR consultant be directed to prepare the Final EIR based upon the lack of any significant new information during the comment period that would trigger recirculation of the Draft EIR.

Betsy Little stated after the public comment period ended, she became aware of the Laguna Beach landslide, which demonstrated the unpredictable nature of effects of landslide repair and construction during the dry season. She felt that this issue should be addressed in the EIR.

There was no further public comment.

Chair Collins read Commissioner Kunzweiler's letter requesting the method of evaluating consistency with general plan policies be limited to "consistent" or "inconsistent" conclusions, eliminating the "partially consistent" conclusions. It was the consensus of the Commission to require this change in the FEIR.

The public hearing was closed.

Commissioner Snow stated that all matters had been covered in the DEIR and he agreed with the Staff recommendation.

Commissioner Fraser stated that items of concern were well articulated in the Staff report and will be addressed in the FEIR.

M/S Fraser/Snow (passed 4-0) to direct the EIR consultant to respond to comments and prepare the Final EIR.

2. 2000 PARADISE DRIVE; CONDITIONAL USE PERMIT #10411; REQUEST TO EXPAND AN EXISTING RESTAURANT (CAPRICE RESTAURANT); Point Tiburon Plaza, Inc., Owners; Mogens Bach, Applicant; Assessor's Parcel No. 59-172-46 (Continued from April 13, 2005)

Planning Manager Watrous reviewed the Staff report.

The public comment period was opened.

Mogens Bach, applicant, discussed the project. He said that he believed that the traffic, parking and noise concerns from the last hearing had now been addressed. He said that moving the valet drop-off/pick-up zone to the public parking lot at the corner of Mar West Street and Paradise Drive would eliminate traffic safety concerns. He said that this would eliminate the u-turn made when drivers drop off passengers on Paradise Drive, which is a dangerous activity. He said that there would be a sign in the lawn area across from the entrance to the parking lot that states "valet parking only" and a sign before the restaurant stating "no drop-off allowed." He said that he reviewed this proposal with the police chief, who favors this implementation. He said that this recommendation could be put into operation as soon as possible. He said that the traffic consultant stated that there is not a parking problem compared to San Francisco, and that the parking situation compares favorably to Sam's restaurant. He stated that an agreement has been made for the Caprice to lease 26 spaces in the Point Tiburon parking lot from 6:00 p.m. through midnight, seven days a week. He said that the consultant found 46 public parking spaces within 0.2 mile of the site. He said that vans, limos and

small vans were to park only in the Point Tiburon parking lot. He said that free valet parking would be provided for all banquets. He described equipment improvements that would mitigate noise problems, including elimination of swamp coolers, new fan equipment and relocated ducts and venting. He said that amplified music would not be permitted in the banquet room, and musicians would be restricted to the area furthest from the deck. He stated that the bottle collection area and garbage cans would be placed under the stairs. He described the emergency access for the banquet room. He stated that there would be no real difference in the peak operation of the restaurant, but that, on an annual basis, there would be more traffic, as the banquet room would be used more frequently. He clarified that the measured building height from mean high tide would be only 3 feet 3 inches above the allowable height limit. He stated that the proposed project is not a minor addition, but that the owner is willing to undertake a transfer of intensity from Point Tiburon to offset the additional floor area for the restaurant.

Commissioner Snow asked if the limitations on amplified music would apply to voice amplification. Mr. Bach replied that he was hesitant to absolutely prohibit voice amplification, as microphones might be necessary for presentations in the banquet room.

Commissioner Snow questioned the times for the parking spaces in the Point Tiburon parking lot. Mr. Bach responded that parking in the lot would be seven days a week, not just Monday through Friday.

Commissioner Fraser asked if the applicant had a sense of the capital investment anticipated for the project. Mr. Bach replied that the investment would be substantial, but that the amount was irrelevant to the discussion. Commissioner Fraser stated that an increase in revenue would probably be expected to pay for the investment. He found it difficult to fathom how a substantial increase in customers would not result in an increase in parking and traffic. Mr. Bach responded that there would be more nights with banquets every week.

Commissioner Aguirre asked where valet-parked cars are taken now and if the amount of time for a valet to walk back to the restaurant has been considered. Mr. Bach replied that the Point Tiburon lot is only used if the restaurant is very busy, and that cars are usually parked in other public spaces. He stated that parking has worked so far without using the Point Tiburon lot, and having three valets on duty would help. He acknowledged that public parking spaces would be used first, and then cars will be taken to Point Tiburon.

The public comment period was opened.

Mike Imfeld, attorney for Cissy Davis, requested a continuance for the hearing, stating that Point Tiburon residents were not notified of this hearing and that the notice in The Ark had been placed late. He disparaged the level of data in the submitted traffic study and the safety of turning into and out of the public parking lot. He claimed that the submitted plans were inaccurate and not to scale. He said that the application for the Caprice, a letter from BCDC and the restaurant's website had conflicting information on the number of seats in the restaurant and the intent of the proposed addition. He reiterated his previous concerns about view and light impacts on the adjacent residences. He questioned the practicality of the proposed valet parking arrangement, asking where valets would be on rainy nights. He said that the valet attendants would be communicating with radios under residents' windows. He said that disabled diners in wheelchairs would have difficulty crossing Paradise Drive from the parking lot to the restaurant. He stated that the Town cannot

delegate a public parking lot for private use. He said that limiting music to the corner of the banquet room would place it adjacent to Ms. Davis' house. He questioned whether the restaurant really needed the new banquet room to survive.

Marilyn Shalls stated she cannot get into her own driveway due to cars from the restaurant parking in the area. She said that this project would turn a residential area into a commercial property.

Ron Glantz stated that he did not receive notice of this meeting. He said that his residence is closest to the Caprice, and that it would be unacceptable to listen to three valet parking attendants talking on radios near where he sleeps. He added that music from the cars in the parking lot would also be a problem.

Susan Wolfe stated that notices were not sent to many of the Point Tiburon residents, and that she lives very near the restaurant.

Jack Mavis stated that he lives across the street from the Caprice, and that parking is a real issue, and not a perceptual one. He said that there was an incorrect assumption that the restaurant is the only use demanding parking in the area, noting that Shoreline Park is visited by many people. He said that restaurant customers often park in restricted parking spaces. He said that a right turn into the public parking lot is very dangerous in late afternoon because people are blinded by the sun. He said that if the number of restaurant patrons increases by 40 percent, noise would rise substantially. He stated that the Caprice is an anomaly located in a residential area and must be reviewed differently than a business in a commercial area.

Laurence Livingston stated that the parking situation cannot be compared to those in San Francisco and Sausalito. He said that the parking needs for Sam's and the Caprice, a deluxe restaurant, are not the same. He stated that patrons of deluxe restaurants are used to leaving their cars at the restaurant's door. He said that it is nonsense to consider a 40 percent increase in floor area to be a minor addition. He said that approval of this additional space would set a precedent for other nearby restaurants.

Robert Wolfe stated that all banquet music is amplified, and that this would be difficult to police.

Oren Hyde stated he must schedule his personal activities dependent upon the Caprice's parking. He said that there are not enough parking spaces available on a typical weekend night or holidays to invite four or five couples to his home. He stated that he was not complaining about something that does not already exist. He said that valet parking attendants sometimes double-park cars all the way down Mar West Street.

Diane Liu stated that people often drive fast on this part of paradise Drive, which is dangerous for pedestrians. She noted that if there is valet parking in the public parking lot, pedestrians would have to cross the street to the restaurant and cars would need to stop. She was concerned that valet parking signs would be left up all the time. She said that it is a straight line between the Point Tiburon parking lot and the restaurant through the Point Tiburon Bayside units, and was concerned that patrons will park in the lot and walk through these homes going to and from the restaurant.

Doug Woodring concurred with comments about traffic and the limited public parking. He noted that a major construction project on Mar West Street will soon begin and could continue for some

time, and stated that construction trucks and barriers will be in the way of the valet parking attendants.

Mark Dickinson, 306 Paradise Drive stated that pedestrians trespassing through his neighborhood could cause a depreciation of his property value. He said that a situation with increased noise in a residential area would need to be disclosed upon sale of his property.

Mike McDonald stated that he is a realtor, and would not buy a unit in the Point Tiburon Bayside area because of the parking problems.

Sissy Davis stated that Mr. Bach had indeed been in her house and had asked her if she wanted to sell the property. She stated that she believed that Ms. Cook wants to turn Ms. Davis' property into a bed and breakfast. She said that the Caprice was operated differently when she first bought her property, but since a change of ownership it has been a nightmare. She said that the proposed addition would dramatically commercialize this residential area. She said that this was not a minor addition, and a decision by the Planning Commission to approve this project would chart a course that would determine the fate of the town for years to come.

Mr. Bach stated that the applicant would like a decision on the application at this meeting. He said that information on the restaurant's website has no bearing on this application. He stated that the owner had asked BCDC what she could do on this property, and had discussed the possibility of using the upper floor for office space. He said that valet employees sit in cars on rainy nights, and that the valet parking signs would only be up when valet parking was provided. He stated that valet parking attendants park cars of banquet customers in the Point Tiburon lot, knowing that they will be at the restaurant longer than other patrons. He stated that the handicapped parking space is a legal distance from the restaurant.

Commissioner Aguirre asked if there is a charge for valet parking. Mr. Bach responded that it is provided as part of the banquet package. John Mutoza, general manager of Caprice, added that valet parking is complimentary for guests on Friday and Saturday nights, and is included for banquets. He said that the Caprice pays for the valet service.

Chair Collins asked about notices for this meeting. Planning Manager Watrous responded that a notice of this meeting was published in the May 25th Ark and mailed two days later to property owners on the mailing list. He said that the 300-foot radius for the mailing list captures only a portion of Point Tiburon residents, but noted that anyone can ask to be added to the mailing list.

Commissioner Snow stated that notification is a concern and he hoped that the homeowners association was notified. He said that voice amplification can result in noise issues. He was concerned about the availability of parking in the Point Tiburon lot beyond the hours proposed by the applicant, as people come for other activities in town and the lot is often filled on Saturdays and Sundays. He was also concerned about the use of a public parking lot for a business, as similar requests may be made in the future for use of other public property in Tiburon. He said that there would be liability issues, and a contract with the Town would be required. He said that it would be difficult to have peace and quiet for nearby homes if valets used walkie-talkies so close by. He said that at the last meeting, he looked forward to seeing a mitigation plan to address the noise and parking issues, but felt that the proposal simply shifted the issues rather than resolving them. He stated that the Caprice has grown and flourished over the years adjacent to a highly trafficked

roadway and residential area. He felt that moving the valet service to the parking lot does not address these issues. He said that he would like to recognize the value of the view for Ms. Davis, but the panoramic views would not be adversely affected to a significant degree by this project.

Commissioner Fraser stated the applicant has given their best effort to come up with a creative solution for the restaurant and residences. He said that goal to increase the business of the restaurant is a good one. He noted that this building was originally a residence, but is now a restaurant in a residential neighborhood, and could be considered to be a square peg in a round hole. He spoke with the police chief who has conceptually supported moving the valet service to the parking lot, but he did not get the feeling from the chief that this is a great idea. He said that he could not in good conscience say that a 39 percent increase in floor area is a minor addition. He could not make the findings to support the application as it stands.

Commissioner Aguirre stated that he visited the restaurant and Ms. Davis' third level apartment, and he had a good perspective about the view issues. He said that this was clearly not a minor expansion of the building. He stated that a transfer of intensity would not solve the issues surrounding the restaurant. He understood that even with an extra twelve or so people each night, the peak intensity of the restaurant use would be no different than the current use. He was not comfortable with the parking and traffic issues. He said that the traffic study included only a cursory look at the parking issues, and there was not enough information on the impacts of shifting the parking situation. He said that the proposal would be safer for patrons, but there would be safety implications of increased banquet traffic turning into the lot at one time. He said that he would not be supportive of the application as it currently stands.

Chair Collins stated that this was a very detailed application with more information than previously submitted, but the parking study was less than it could be. As an example, he said that the parking study did not discuss stacking of vehicles. He said that he had a problem with essentially dedicating a public parking lot for a private purpose. He felt that other people wanting to use this lot would be dissuaded from using it. He said that noise from people, valet employees, car doors opening and closing, and engines starting in the parking lot right next to residences would cause problems for these neighbors. He stated that traffic along Paradise Drive has increased since the Caprice first opened, and the expanded use would result in more people crossing the street at night, with valets coming back to the restaurant in the dark. He said that there would be a loss of some light and view for Ms. Davis, which is an issue because this is a restaurant in a residential neighborhood. He said that he could not make the findings to approve the project, and therefore could not support the application.

M/S Aguirre/Fraser (passed 4-0) to direct Staff to prepare a resolution denying the application to be presented at the next meeting.

3. ZONING ORDINANCE TEXT AMENDMENT; FILE #Z2005-01; ADD SECTION REGARDING ECONOMIC EXCEPTIONS TO ADDRESS INSTANCES WHERE A "TAKING" OF PROPERTY IS ALLEGED BY APPLICANT

Community Development Director Anderson reviewed the Staff report. He discussed changes made to the resolution by the Town Attorney in the late mail received by the Commission.

Chair Collins asked about Section 16-7.3(a), which requires that Economic Exception applications be filed “as early as possible.” He questioned the enforceability of this clause. Community Development Director Anderson speculated that this clause was intended to apply to facial takings claims, in which case the Economic Exception application would be submitted with the initial application.

Chair Collins asked whether contiguous parcels under the same ownership should be included in the Economic Exception analysis, even if not part of the development application. Community Development Director Anderson responded that he believed that they would if they had any material bearing on the property or the project.

Chair Collins stated that the list of materials to be submitted for the Economic Exception does not include any information regarding the ultimate value of the proposed project upon completion. He asked that development costs and sales information also be included in the list. He also requested that the text amendment require that copies of underlying documents be included with the title report.

Commissioner Aguirre asked what sort of burden is put on applicant from the beginning, as a result of the “as early as possible” clause. He asked if the study must be prepared before there is any type of negative decision and if that means everyone must file [for an Economic Exception] at day one. Community Development Director Anderson responded this is not the intent, and unless an applicant was making a facial takings claim; there would be no basis for filing until the Town actually applied its land use regulations.

Commissioner Aguirre noted that proposed use helps determine fair market value and value depends upon what the property is approved or denied for. It would be relevant to get a handle on quantitative values such as the highest and best use, the project as approved, and any increment of takings value. He concluded that a review of the list of submittal items for application of an Economic Exception permit was warranted.

Chair Collins stated that Section 16-7.4(12), while seemingly asking applicant for a brief explanation, appears to him to be asking for a legal opinion. He suggested that this section should be reviewed again by the Town Attorney.

The public comment period was opened.

Jerry Riessen, Ridge Road, stated it is great this is being put forth and it is important that it be done. It is the fair way for the applicant and the Town to get information in up front, so all involved are dealing with good information rather than screaming and yelling about a taking. This process establishes a basis for the takings issue. When information comes in is not as important as whether there is enough time to process the information before a decision is made. Information should be required with enough time to allow the Town time to analyze it. He interviewed people who do economic exception analyses, although he does not know the time frame typically necessary to complete an analysis. There should be time for a public hearing to listen to experts and to respond, and an applicant should expect to pay for the consultant’s work on the economic exceptions analysis. Riessen added that the Planning Commission should consider that “minimizing environmental damage” is broad and suggested adding language to read “and to the maximum extent feasible, protect prominent ridgelines” to Section 16-7.5(a)(2).

Commissioner Aguirre noted that the General Plan takes a holistic view, and asked if one element should be separately highlighted. If one complies with the General Plan, ridges are taken into account.

Mr. Riessen responded that if the economic analysis indicates there must be more lots, the phrase “minimizing environmental damage” allows them to be put anywhere. Ridgeline locations for houses tend to be the most valuable, and he would recommend guidance be given that any additional lots necessary to avoid a taking not be located on a prominent ridge.

There being no further comments, the public comment period was closed.

Commissioner Aguirre asked if the General Plan states that protection of ridges is priority.

Community Development Director Anderson responded that ridgelines are given highest priority in the current General Plan, and that the Draft General Plan carries that protection forward as well.

Commissioner Aguirre asked if Section 16-7.5(a)(2), as currently proposed, would not achieve Mr. Riessen’s goal, given that ridgelines are already given highest priority. Community Development Director Anderson responded that, given an option, the Town’s first choice would be to not allow additional lots on prominent ridgelines.

Commissioner Aguirre asked what happens if there is no other way and a parcel would have to put it on a ridge or there would be a taking.

Commissioner Fraser stated the General Plan provides guidelines. If a project is not otherwise economically viable and has to be adjusted, and if this [Economic Exception] is granted, then it trumps the General Plan and somebody must decide where additional lots will go.

Community Development Director Anderson noted that under the proposed ordinance, the Town Council makes this decision, complying with the General Plan’s policies to the “maximum extent possible.”

Commissioner Snow expressed support for adding the text regarding prominent ridges as suggested by Mr. Riessen.

Community Development Director Anderson suggested that the Planning Commission motion recommend “considering” this text addition, but that the resolution itself not be modified until the Town Attorney is able to weigh in on the issue.

Commissioner Snow stated that this process should encourage applicants to take into consideration different scenarios up front.

Commissioner Aguirre asked if this type of ordinance has increased the takings claims of applicants in other jurisdictions where it has been adopted.

Community Development Director Anderson responded that the Economic Exception process has not been legally tested. There is simply no case law to draw conclusions from.

Chair Collins stated that ten days for the applicant to prepare the Economic Exception information, and for the Town to prepare a response, is not enough time. He was concerned about the tight time-frames established in the ordinance.

Commissioner Aguirre asked how applicant can respond to Section 16-7.5(a)(12) up front if he does not yet know the response of the Town. Community Development Director Anderson stated that an applicant would be able to respond if a facial takings claim was being made, but the application for Economic Exception would not otherwise be submitted up front. Chair Collins asked if this distinction could somehow be clarified in the ordinance.

There was a brief discussion regarding the procedural aspects of filing the Economic Exception application.

It was the consensus of the Commission to include suggested revisions regarding the text amendment and list of application materials, Town costs being borne by the applicant, and the late mail text changes. Items suggested for the Town Attorney and Town Council to consider during the Town Council deliberations included clarification regarding the timing of the Economic Exception application, whether additional information regarding the current value of the property and the ultimate value of the proposed project upon completion should be required from the applicant, and whether the additional text regarding protection of prominent ridges should be added.

M/S Snow/Aguirre (passed 4-0) to adopt the resolution as revised and to forward the additional comments from this hearing to the Town Council for consideration during its deliberations.

MINUTES

4. Planning Commission Minutes of May 11, 2005

Amendments include:

Page 3, 2nd paragraph, 1st line, change “could” to “would.” Last line, add “that are” after “designs.”

Page 4, 4th paragraph, 1st line change “about” to “that.” Change “sized” to “sizes.” Change “around” to “adjacent to and below.” Delete “and asked that this information.”

Page 4, 5th paragraph, 1st line, change “on grading” to “about grading.”

Page 5, 1st paragraph, 2nd line to state, “connect the private open space and the public open space.”

Page 5, 6th paragraph, 3rd line, change “said” to “noted.” Change “over” to “regarding.” 5th line, insert “actually” before “Look like.” 6th line, insert “in order” before “to better.”

Page 5, last paragraph, 1st line, change “many” to “various.” 2nd line, delete “many.”

Page 6, 1st paragraph, 1st line, insert “also” before “like.”

Page 7, 2nd paragraph, 2nd line, change “report” to “DEIR.”

Page 7, 3rd paragraph, 2nd line, change “EIR” to “DEIR.”

M/S Fraser/Snow (passed 3-0, Aguirre abstained) to approve the minutes as amended.

ADJOURNMENT

The meeting was adjourned at 10:45 p.m.

RICHARD COLLINS, CHAIRMAN

ATTEST:

SCOTT ANDERSON, SECRETARY