



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

ACTION MINUTES

CALL TO ORDER AND ROLL CALL 7:30 PM

Chairman Kunzweiler, Vice Chairman Fraser, Commissioner Aguirre,
Commissioner Collins **All Present**

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. STONY HILL ROAD: FINAL ENVIRONMENTAL IMPACT REPORT (FEIR) FOR A PROPOSED FIVE-LOT RESIDENTIAL DEVELOPMENT (LING PRECISE DEVELOPMENT PLAN) FILE #303022; Joe Ling, et al., Owners and Applicants; Assessor's Parcel No. 055-261-10 **Recommended Certification of FEIR to Town Council (4-0)**
2. 41 MAIN STREET: CONDITIONAL USE PERMIT #10507; VARIANCE #20550; REQUEST TO OPERATE A RESTAURANT, WITH A VARIANCE FOR REDUCED PARKING; Doris Caceres Trust, Owner; Eddie Kung, Applicant; Assessor's Parcel No. 059-151-04 **Approved (4-0)**

ADJOURNMENT 9:20 PM

**APPROVED MINUTES NO. 927
PLANNING COMMISSION
December 8, 2005
Special Meeting
Town Council Chambers
1505 Tiburon Boulevard, Tiburon, California**

CALL TO ORDER AND ROLL CALL

Present: Chair Kunzweiler, Commissioners Collins, Fraser and Aguirre
Absent: None
Staff Present: Community Development Director Anderson, Planning Manager Watrous and Meeting Recorder Flanagan

ORAL COMMUNICATIONS

There were none.

COMMISSION AND STAFF BRIEFING

Community Development Director Anderson noted that the Tiburon Glen project may be back before the Planning Commission at the January 11, 2006 meeting. No date has been set for the Belvedere Tennis Club. He added that Staff will bring Zoning Ordinance and Map amendments implementing aspects of the new General Plan to the Commission in January. He said that the Town has received a Draft Environment Assessment document for the Martha Shore site from the County, which is required prior to an EIR for this project, which is currently being processed by the County.

PUBLIC HEARING

1. **STONY HILL ROAD; FINAL ENVIRONMENTAL IMPACT REPORT (FEIR) FOR A PROPOSED FIVE-LOT RESIDENTIAL DEVELOPMENT (LING PRECISE DEVELOPMENT PLAN) FILE #303022; Joe Ling, et al., Owners and Applicants; Assessors Parcel No. 055-261-10**

Planning Manager Watrous presented the Staff report and noted that discussion should be limited to comments on the final EIR. In response to a question from Chair Kunzweiler, Planning Manager Watrous explained that the purpose of an EIR is to ensure that the Planning Commission and Town Council have adequate information on the potential environmental impacts of a project to make a knowledgeable decision on the application. He stated that the EIR examines alternatives with varying configurations and numbers of units on the site, and looks at the differences between those. He stated that the Commission must ensure the potential impacts for any future iterations of the project are discussed in the EIR; if a change to the project results in impacts not identified in the EIR, subsequent environmental review would be necessary.

Chair Kunzweiler confirmed that the intent of an EIR is to ensure adequate analysis of the project. He reiterated that discussion of the merits of the project is not appropriate at this time, and that a separate hearing on the project merits will be scheduled after the EIR is certified.

Neil Sorenson, applicant's representative, asked that the Planning Commission certify the Final EIR. He stated that the comments that have been raised were adequately addressed by the EIR consultant.

The public comment period was opened.

Roy Little stated that the view from his house would be significantly impacted by the project. He stated that the rankings of the alternatives in the EIR are quite clear, and he felt that some of these alternatives could mitigate or eliminate the significant unavoidable impacts of the project. He stated that the alternatives should be discussed as mitigation measures.

Allan Littman stated that not enough test borings have been done to come up with a precise estimate of the amount of grading to be done. He noted that the EIR states that construction noise of up to 80 dBA could be expected for up to two construction seasons.

Betsy Little stated that the Planning Commission needs to be as fair as possible to all. She stated that the EIR needs more clarification about visual impacts, grading, landslide repair, noise, building envelopes and sizes of houses. She suggested that there be a requirement that no smoking be allowed during brush clearing. She wanted to ensure that things are followed through all the way to the end. She stated that views from the house at One Owlswood Road are also from inside the residence. She noted that the construction period was now lengthened to two seasons. She asked for information about the risk in living below the non-engineered slope. She was concerned about landslides that could be caused during construction. She felt that the amount of grading should be considered a significant and unavoidable impact. She said that no grading plan has been submitted for the shear key method. She asked that there be some sort of liability coverage for those properties in the slide path. She said that a noise level of 80 decibels is unacceptable. She asked about building on steep hillside slopes and questioned whether slope or average slope was considered. She questioned how the sizes of nearby houses were characterized in the EIR. She asked if consistency with ridgeline policies would mean that houses could never be moved to preserve a significant ridgeline. She said that the EIR should include information about springs on the site.

Becky Pringle said that she was unsure about the meaning of "certified" for purposes of the EIR. She said that the EIR has many inconsistencies and leaves many issues unanswered. She said that a decision needs to be made about the method of landslide repair to be used. She stated that the sizes of nearby homes needed clarification. She said that this was not an appropriate project for this piece of land.

Chair Kunzweiler reiterated that the purpose of the EIR is to ensure the environmental analysis is complete enough to allow the Town to make an informed decision on the project. He said that there may be grey areas, but the major issues need to be sufficiently addressed.

Ms. Little asked if projects are ever submitted where the developer works with the community members and comes up with a solution that everybody likes. Community Development Director Anderson responded that this almost never happens.

Mr. Sorenson stated that part of the reason that the project has gone on for so long is that exhaustive geotechnical repair studies have been prepared. He said that all of the geotechnical experts for this project agree that no further studies need to be done.

Chair Kunzweiler asked what the rationale was for not delving further into the shear key method of landslide repair. Mr. Sorenson stated that removing the entire landslide will effectively repair the landslide, but it is not known whether other methods will work. Bill Verelley added that these studies were completed to answer the Town's questions about the grading issues.

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

Commissioner Aguirre stated that he had similar questions to those of the neighbors and did not feel that every question had been answered. However, as he understood the process, there is enough information to understand the overall impacts of the project. Inconsistencies and other issues will be discussed in detail during the review of the merits of the project. He said that further study is not necessary to understand the overall environmental impacts of the project, and that he would recommend certification of the EIR.

Commissioner Fraser stated that although there appear to be inconsistencies in the report, the consultant has done a good job of responding to the comments. He noted that the neighbors have pointed out areas of concern and where they wanted questions to be answered, and he believes that they have been addressed. He believed that he had enough information to certify the document as it stands.

Commissioner Collins asked if further geotechnical studies are going to be done. Leonard Charles, EIR Consultant, described additional work that had been done by the applicant's consultant and reviewed by the Town's geotechnical consultant and his own subconsultant to insure accuracy.

Commissioner Collins asked if the appropriateness of the shear key method can be known now. Mr. Charles stated that the consultants have looked at it and think it may be feasible, but do not believe that it would save that much time or effort. Planning Manager Watrous further explained that the Town originally requested analysis of this method to determine if this would substantially reduce the noise and dust impacts associated with the landslide repair; however, it turned out that the shear key work would not substantially lessen these impacts.

Community Development Director Anderson added that final engineering drawings are not completed until right before the project is going to start, and the project may change between now and then. He recommended the possibility of a condition of approval requiring this method to be further explored as the project moves closer to construction.

Commissioner Collins stated that it was difficult to get a grasp on the alternatives without knowing all of their impacts. Community Development Director Anderson recommended keeping options open for the landslide repair.

Commissioner Collins stated that alternatives are not supposed to be mitigation measures. He said that CEQA requires that an EIR to contain enough information to make a reasonably informed decision. He said that he would recommend certification of the EIR.

Chair Kunzweiler asked what the degree of comfort is that 75,000 cubic yards is the correct estimate for the amount of grading. Mr. Charles stated that no one knows exactly, but that the engineers have reviewed this and believes this estimate to be more or less correct. He said that the amount of grading will not be known for sure without actually excavating the site. He noted that the applicant's consultant had conducted more borings. He stated that mitigation measures limiting the time of the grading to dry months would lengthen the time of the construction. He said that by working from the bottom of the site up would help with stabilization and winterization of the hillsides.

Chair Kunzweiler asked about the Town's liability for slide activity during construction. Community Development Director Anderson stated that liability involves proximate cause and he did not believe that the Town would be liable. He added that the Town requires performance bonds and insurance for contractors.

Chair Kunzweiler asked for more information about the 80 dBA noise estimates. Mr. Charles stated that 80 decibels is fairly common for loud bulldozers if standing 50 feet away. He said that this is not an average noise level, but comes and goes, and is common for construction projects. Community Development Director Anderson added that this is the worst-case scenario over two construction seasons, but if there is a strong desire on the part of the Town, conditions of approval could be imposed that could shorten that time.

Chair Kunzweiler stated that EIRs are big, complicated documents, but that this EIR gives a clear sense of the challenges facing the project. He stated that more review would not result in substantially more information. He recommended certifying the EIR and moving on with the project. As a note to the applicant, he felt that the project as proposed is a problem, with many inconsistencies with the General Plan and major hurdles to be overcome, including visual impacts, noise, and grading. He felt that five units on this site would be a challenge, and encouraged the applicant to think hard about possible project alternatives.

Commissioner Aguirre added that he was very troubled by the project as it currently stands. He said that the inconsistencies with the General Plan are very significant, and that certification of the EIR is no indication about the merits of the project.

Commissioner Fraser stated that at the beginning of the review process, he was concerned about the lack of communication between the developer and applicant. He said that the overall scope and size of the project, specifically the number of homes, troubles the Commission and the neighbors. He said that it would be a difficult mountain to climb to get to five units. He urged the applicant to revisit the proposed floor areas, as the town wants overall neighborhood harmony and not to

replicate what happened on Via Los Altos. He encouraged the applicant to come up with a project that could be built more quickly, and to look at the visual impacts from the inside of the Littles' home.

M/S, Collins/Aguirre (passed 4-0) to adopt the resolution recommending that the Town Council certify the Final EIR for the Ling Precise Development Plan.

- 2. 41 MAIN STREET: CONDITIONAL USE PERMIT #10507; VARIANCE #20550; REQUEST TO OPERATE A RESTAURANT, WITH A VARIANCE FOR REDUCED PARKING; Doris Caceres Trust, Owner; Eddie Kung, Applicant; Assessor's Parcel No. 059-151-04.**

Commissioner Collins stated that he does not have a proprietary interest in the Corinthian Yacht Club, even though he is a member, and will not recuse himself from this item.

Planning Manager Watrous presented the Staff report.

Ron Caceres stated that he has looked at a number of uses for the downstairs area of this building and felt that this restaurant would be the most resident-oriented use and would be best for the town. He noted that a much larger restaurant (Tiburon Tommie's) had previously existing on the site. He said that the space is small with some 800 square feet of seating area. He said that there would be no outside seating because of the pedestrian easement. He said that there is no parking on the site and although he has unsuccessfully tried to lease parking, there is public parking in the Main Street parking lot across the street. He described possible changes to the floor plan, including moving the kitchen to the rear, but noted that there would be no exterior changes to the building.

Commissioner Collins asked about the trash collection for the restaurant. Mr. Caceres replied that trash would be placed in a three-yard trash bin on the back side of the building and would be rolled on the south side to the street. He said that the frequency of trash pickups will be increased.

Commissioner Fraser asked if a restaurant can put in a valet parking service. Planning Manager Watrous responded that it is possible; however; finding a location to drop off pedestrians on Main Street would be difficult.

Commissioner Fraser suggested that a condition of approval could restrict valet parking. Community Development Director Anderson stated that it is highly unlikely a location on Main Street could be found to be appropriate for a valet parking service.

Commissioner Fraser noted that some businesses provide free parking in the parking lots. Community Development Director Anderson noted that only businesses that operate on land owned only by the owners of the parking lots validate parking in those lots.

Mr. Caceres raised concerns about a proposed condition of approval requiring a review of the use permit after six months, stating that the owners will spend hundreds of thousands of dollars to build out a restaurant and the use permit should not be revoked if someone wants to require parking in the future.

Chair Kunzweiler responded that the review is standard practice. He said that intention is to develop a vibrant, healthy Main Street, and that the purpose of the review is to see how things are going.

Community Development Director Anderson added that the review gives the applicant the opportunity to change other conditions of approval and to look at the unanticipated problems that were not addressed.

Chair Kunzweiler stated that this is the second parking variance for this site and would like to see the condition of approval left intact.

Commissioner Fraser suggested eliminating the portion of Condition of approval No. 7 after “operation.”

Chair Kunzweiler asked why there were restrictions on the hours of operation and recommended that Condition of Approval No. 5 be deleted.

The public comment period was reopened.

John Warren, Commodore of the Corinthian Yacht Club, stated that although the club welcomes the restaurant, they have concerns about customers driving in to the club entrance. He said that club would strongly oppose an outside trash dumpster and any kitchen exhaust aimed toward their property

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

Commissioner Collins asked if the west and south public access walkways adjacent to the building were to be kept open. Planning Manager Watrous replied that this was a BCDC requirement. Community Development Director Anderson added that kitchen venting would be reviewed by the Building Official.

Mr. Caceres stated that a vent has been installed at the southeast side of the building on the water side, which goes up through the ceiling. He said that there is no way of knowing how much trash there will be but frequency of pickups will resolve this issue.

Commissioner Collins stated that he likes the idea of the restaurant and felt that this would be a good addition to the Town. He noted that historically this site has been used for a restaurant with a greater demand for parking. He suggested a condition of approval to require that the trash dumpster for the restaurant be kept within the trash enclosure and the kitchen venting remain on the east side of the building.

Commissioner Aguirre asked if language could be added in the resolution requiring the restaurant to inform its patrons via signage about not stopping on the street. Community Development Director Anderson confirmed that this could be required, as well as a notice of the free short-term parking in the lot across the street.

Mr. Warren added that restaurant customers would be able to park in the yacht club's parking lot if the gate is open. Planning Manager Watrous responded that this issue would be best dealt with by signage prepared and enforced by the yacht club.

M/S, Fraser/Aguirre (passed 4-0) to approve the resolution approving the conditional use permit to operate a restaurant with a parking variance at 41 Main Street, with the conditions of approval modified to eliminate Condition No. 5; amending Condition No. 7 with the text to end at "operation"; to add a condition requiring kitchen venting to remain on the east side of the building; to add a condition requiring trash to be kept in an enclosure within the building; and to add a condition requiring signage to notify customers not to park in the entrance to the Corinthian Yacht Club and about available free short-term parking in nearby lots.

ADJOURNMENT

The meeting was adjourned at 9:20 p.m.

JOHN KUNZWEILER, CHAIRMAN

ATTEST:

SCOTT ANDERSON, SECRETARY