

# Town of Tiburon STAFF REPORT

AGENDA ITEM E2



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TO:                   **DESIGN REVIEW BOARD**

FROM:               **PLANNING MANAGER WATROUS**

SUBJECT:           **5070 PARADISE DRIVE; FILE #706088**  
**SITE PLAN AND ARCHITECTURAL REVIEW FOR APPROVAL OF AS-**  
**BUILT CONSTRUCTION OF A FENCE**

MEETING DATE:   **JULY 20, 2006** \_\_\_\_\_

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## **PROJECT DATA:**

<b>ADDRESS:</b>	<b>5070 PARADISE DRIVE</b>
<b>ASSESSOR'S PARCEL:</b>	<b>038-022-73</b>
<b>FILE NUMBER:</b>	<b>706088</b>
<b>PROPERTY OWNERS:</b>	<b>CHRISTOPHER SMITH</b>
<b>APPLICANT:</b>	<b>SAME</b>
<b>LOT SIZE:</b>	<b>10,350 SQUARE FEET</b>
<b>ZONING:</b>	<b>RO-2 (SINGLE--FAMILY RESIDENTIAL-OPEN)</b>
<b>GENERAL PLAN:</b>	<b>MEDIUM DENSITY RESIDENTIAL</b>
<b>FLOOD ZONE:</b>	<b>C</b>
<b>DATE COMPLETE:</b>	<b>JUNE 14, 2006</b>

## **PRELIMINARY ENVIRONMENTAL DETERMINATION**

Town Planning Division Staff has made a preliminary determination that this proposal would be exempt from the provisions of the California Environmental Quality Act (CEQA) as specified in Section 15303.

## **PROPOSAL**

The applicant is requesting Design Review approval for the as-built construction of a fence along the northern portion of the property located at 5070 Paradise Drive. The subject property is developed with a single-family dwelling. The subject fence consists of wrought iron metal posts and open railing. The black colored fence is intended to have a maximum height of six feet (6').

A previous Site Plan and Architectural Review application (File #705150) was submitted in 2005 for Staff-level approval of the as-built fence. At that time, Staff received objections from the adjacent property owner at 5080 Paradise Drive and noted potential issues regarding an easement in the location of the fence. As a result, the application was scheduled to be referred to the Design Review Board for review. The applicant subsequently withdrew the application and has now submitted the subject application to again attempt to legalize the fence.



# Town of Tiburon

## STAFF REPORT

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### ANALYSIS

#### Zoning

Staff has reviewed the proposal and finds it to be in conformance with the development standards for the RO-2 zone.

#### Design Issues

The posts for the subject fence run along a portion of the northwest (left) side property line and then above the mean high tide line to the rear of the property. The applicant has indicated that the fence is intended to provide protection from deer entering this portion of the property.

In 1991 the San Francisco Bay Conservation and Development Commission (BCDC) granted approval for construction of improvements on the subject property. At that time, BCDC imposed a 15 foot wide view easement along the northwest side property line which is intended to protect views of the bay from Paradise Drive. Additional garden fencing and landscaping have previously been installed within this easement.

It does not appear that the subject fence would intrude into views of the bay from Paradise Drive, and therefore should be consistent with the intent of the BCDC view easement. The applicant will be required to submit proof of approval from BCDC prior to issuance of a building permit for the fence.

The fence is generally screened from view from the adjacent property at 5080 Paradise Drive by dense vegetation along the shared property line. The adjacent homeowner has raised concerns that the fence would interfere with deer migration in the area; however, it appears that except at high tide, there would be area below the fence for deer to pass along this stretch of shoreline.

Several of the posts for the subject fence are currently more than 6 feet tall. All portions of the fence within the required setbacks would be required to have a maximum height of 6 feet above grade.

#### Public Comment

A letter has been received from the owner of the property at 5080 Paradise Drive raising the issues noted above.

### RECOMMENDATION

The Board should review this project with respect to Zoning Ordinance Sections 4.02.07 (Guiding Principles) and determine that the project is exempt from the provisions of the California Environmental Quality Act (CEQA) as specified in Section 15303. If the Board wishes to approve the project, Staff would recommend that the attached conditions of approval be applied.

# Town of Tiburon

## STAFF REPORT

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### ATTACHMENTS

1. Conditions of approval
2. Application and supplemental materials
3. Letter from Bill and Bess Davoren, dated August 9, 2005
4. Submitted plans

# Town of Tiburon

## STAFF REPORT

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### CONDITIONS OF APPROVAL

#### 5070 PARADISE DRIVE

#### FILE #706088

1. This approval shall be used within three (3) years of the approval date, and shall become null and void unless a building permit has been issued.
2. The development of this project shall conform to the application received by the Town of Tiburon on May 30, 2006, or as amended by these conditions of approval. Any modifications to the plans of May 30, 2006 must be reviewed and approved by the Design Review Board.
3. Plans submitted to the Building Division for plan check shall be identical to those approved by the Design Review Board. If any changes are made to the approved Design Review plans, the permit holder is responsible for clearly identifying all such changes when submitted to the Building Division for plan check. Such changes must be clearly highlighted (with a "bubble" or "cloud") on the submitted plans. A list describing in detail all such changes shall be submitted and attached to the building plans, with a signature block to be signed by the Planning Division Staff member indicating that these changes have been reviewed and are approved, or require additional Design Review. All changes that have not been explicitly approved by Staff as part of the Building Plan Check process are not approved. Construction that does not have Planning Division approval is not valid and shall be subject to stop work orders and may require removal.
4. If this approval is challenged by a third party, the property owner/applicant will be responsible for defending against this challenge. The property owner/applicant agrees to defend, indemnify and hold the Town of Tiburon harmless from any costs, claims or liabilities arising from the approval, including, without limitations, any award of attorney's fees that might result from the third party challenge.
5. Applicant shall obtain approval from the Bay Conservation and Development Commission for fencing prior to issuance of building permit.
6. No portion of the fencing shall exceed six feet (6') in height from natural grade.