



**TOWN OF TIBURON  
PLANNING COMMISSION  
1505 Tiburon Boulevard  
Tiburon, CA 94920  
Action and Approved Minutes  
Regular Meeting  
August 23, 2006 – 7:30 PM**

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## **ACTION MINUTES**

### **CALL TO ORDER AND ROLL CALL    At 7:30 PM**

**Present:** Chairman Fraser, Vice Chairman Aguirre, Commissioner Kunzweiler,  
Commissioner O'Donnell

**Absent:** Commissioner Collins,

### **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. END OF STONY HILL ROAD; LING PRECISE DEVELOPMENT PLAN (PD #24) TO CREATE FIVE BUILDING SITES ON A 5.6 ACRE PARCEL; Joe Ling, et. al., Owners and Applicants; Assessor's Parcel No. 055-261-10. The Planning Commission will consider making a recommendation to the Town Council on this application.  
**Recommended Conditional Approval of a 2-lot Alternative (4-0)**

### **DISCUSSION ITEM**

2. 2240 CENTRO EAST: STATUS REPORT ON A TEMPORARY CONSTRUCTION STAGING AREA FOR LYFORD COVE UTILITY UNDERGROUNDING PROJECT  
**Discussed Item; No Action Taken**

**ADJOURNMENT    At 9:55 PM**

**APPROVED MINUTES NO. 939  
PLANNING COMMISSION  
August 23, 2006  
Regular Meeting  
Town of Tiburon Council Chambers  
1505 Tiburon Boulevard, Tiburon, California**

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**CALL TO ORDER AND ROLL CALL**

**Present:** Chair Fraser, Commissioners Aguirre, Kunzweiler and O'Donnell  
**Absent:** Commissioner Collins  
**Staff Present:** Community Development Director Anderson, Planning Manager Watrous and Minutes Clerk Ashworth

**ORAL COMMUNICATIONS**

None

**COMMISSION AND STAFF BRIEFING**

Planning Manager Dan Watrous introduced Minutes Clerk Ashworth. He noted that there were no items scheduled for the September 13 Planning Commission meeting.

**PUBLIC HEARING**

- 1. END OF STONY HILL ROAD; LING PRECISE DEVELOPMENT PLAN (#24) TO CREATE FIVE BUILDING SITES ON A 5.6 ACRE PARCEL; Joe Ling et. al., Owners and Applicants; Assessor's Parcel No. 055-261-10. The Planning Commission will consider making a recommendation to the town Council on this application.**

Planning Manager Watrous presented the Staff report and described the potential impacts of the project as proposed. He described concerns with view impacts; proximity to the ridgeline on the site; incompatible house sizes in comparison to the surrounding neighborhood; and noncontiguous open space. He noted that modifications to the project design have been suggested, but acknowledged that the changes could be very costly to the applicant. He stated that Staff recommends that a modified two-lot design be recommended to the Town Council for approval. He added that the economic feasibility of the modified project design would be for the Town Council to consider, after judging the merits of the project.

Neil Sorensen, attorney for the owner, requested that the Planning Commission approve the five lot project design. He described changes that had been made to the five lot design, including reductions to the building envelopes and house sizes, and other modifications to minimize the visual impacts of the project.

Bill Verelley, representing the owner, Joe Ling further described the changes that had been made to the five lot project design. He said that the lot had been spread out, the size of the homes had been reduced, open space area had been increased, and the primary and secondary building envelopes had been reduced in size.

Commissioner Kunzweiler asked why the fundamental project design had not changed that much over a period of years. Mr. Verelley responded that the density requested would be consistent with the surrounding neighborhoods. He further described the proposed open space, with a public access to adjacent Town-owned open space.

Cliff Lowe, landscape architect, presented visual analysis of the project using photosimulations showing conceptual house designs and future mature landscaping. The simulations showed the project from story poles on the vacant site, to homes in place, to vegetation at 10 years maturity. He stated that the photos were taken from three different views: 1) San Rafael Avenue, 2) from McAnnan Court, and 3) off Edgewater Road.

Commissioner O'Donnell asked about the storey poles and why there were not more poles installed. Mr. Verelley stated that three story poles were installed for each lot, representing one at the center of the home and two the lower edges. He stated that only three poles were needed to conduct the visual analysis.

Commissioner Kunzweiler stated that the visual analysis seemed to be optimistic and incomplete, as it did not include the roadway or retaining walls on the site. Mr. Lowe responded that additional poles would be mostly hidden by houses and not visible from lower viewpoints.

Chair Fraser asked how tall the trees would be at maturity. Mr. replied that due to soil conditions, the trees would grow incrementally to approximately 18 feet after 10 years. Chair Fraser responded that it would be unlikely that these homeowners would allow trees to be planted that would block their own views.

Elliott Grimshaw, consultant representing the applicant, submitted financial estimates for the proposed project comparing sales costs for the five lot project and for lower density projects. He stated that a two lot project would result in a loss to the owner of \$3.2 million.

Mr. Sorensen stated that CEQA does not allow a city to approve a project that is not economically feasible. He added that the Town cannot disapprove a project unless there are specific health and safety issues. He stated that a two lot project cannot be approved since there have been no health or safety impacts demonstrated. He again asked the Commission to recommend approval of the five lot project design.

Richard Grey stated that the geotechnical analysis in the EIR was incomplete and needed to be completed before the project would be approved. He believed that the story poles were inadequate to show the mass of the buildings. He stated that CC&R's do not provide protection, as they can be changed. He felt that two lots would provide a reasonable return, given what the applicant paid for the property.

Ann Gigounas stated that she lives in one of the most potentially impacts homes, yet there was no visual analysis done from her property. She said that the conceptual landscaping shown would also block their views. She said that if five homes were approved, their views of San Francisco would be

replaced by views of houses and trees. She stated that two lots would give the applicant a fair return and would be considerate of homes around the site.

Leonard Sperry stated that he also owns a lot below his house on Stony Hill Road that he may be selling, and he believes that the five lot project would impact the sale of that lot.

Kent Allen agreed that the house on Lot 5 would impact the Gigounas' views.

John Gigounas stated that the property was purchased for around \$350,000, and felt that two lots would give the applicant a fair return. He stated that the applicant did not consult with the neighbors about the basic project design. He felt that the proposal would violate the aesthetics of the area and that Town ordinances say that the applicant cannot build anything that would completely block their views.

Roy Little asked what the Commissioners would do with the economic information brought up by the applicant. Chair Fraser stated that he has a difficult time absorbing detailed information submitted at the last minutes. Commissioner Kunzweiler added that the Commission's mission is to come up with the right decision consistent with the general plan and zoning ordinance, and that economic information has little bearing on that decision. He also noted that the Town has an economic exception process where the financial information will be considered.

Mr. Little complemented Staff for being unflagging in their responsiveness to the neighbors and all parties involved. He supported the Staff recommendation for the two lot alternative project design.

Dr. Ann Marie Meagher was concerned that the EIR did not adequately address safety issues and dust impacts from the landslide repair. She stated that the applicant must have been aware of the constraints and risks associated with developing a site with landslides. She supported the two lot alternative recommended by Staff.

Fred Selinger stated that the submitted plans just keep looking the same. He stated that the Commission should not be bound by the densities of surrounding developments, as some of those are too high. He stated that it would be very difficult to hide the large proposed retaining walls. He felt that traffic from construction and the new homes would create problems on Gilmartin Drive that were not considered in the EIR.

Betsy Little stated that she was most appreciative of the time the Commission and Staff have spent on this project. She requested that an additional mitigation measure be imposed to prohibit workers from smoking on the site while brush is being removed. She stated that trees or shrubs were still needed to shield her views of traffic using the driveway extension to the house at 15 Mantegani Way. She disagreed with conclusions in the Staff report about aspects of the project that would be "partially consistent" with policies and ordinances. She stated that there has been no real attempt to scale the project back and supported the alternative two lot project design.

Sharon Power stated that she has views of Mt. Tamalpais across the site and felt that the applicant has been very responsive and cooperative in making changes to the project. She stated that the landslide repair and access to open space provided by the project would be benefits and felt that the problems with views could be worked out.

Carolyn Cotter stated that she felt that the applicants have not been responsive to concerns about noise and dust from construction. She supported a two lot project, stating that five homes would be more than the neighborhood could bear.

The public hearing was closed.

Commissioner O'Donnell stated that he joined the review process for this project late, but that he had reviewed the EIR and other pertinent information on the application. He stated that he supports the Staff recommendation for two lots on the site. He said that it is hard to balance the rights of the property owner and the impacts to the neighbors. He noted that the Town has policies that encourage limiting densities and maximizing open space. Given the amount of grading and landslide repair necessary on the site, he supported the alternative two lot project design.

Commissioner Aguirre stated that it is regrettable given the amount of time spent on this project and the direction from the Commission and Staff that the same project keeps coming up. He felt that two or three lots seem doable for this property. He stated that the applicant has not left the Commission much of a choice but to approve five lots or none, but if that is the choice, then none should be approved. He rejected the five lot alternative project design, stating that it does not begin to address the issues raised by the EIR and other general plan and zoning ordinance concerns. He could see a benefit to two lots on the site, but wanted to get an idea that the applicant would be willing to pursue that level of development. He stated that it is frustrating to get last minute information, and said that he did not accept the applicant's financial information at face value. He stated that the applicant does not have a constitutional right to a profitable project.

Planning Manager Dan Watrous stated that it would be better for the Commission to recommend an appropriate level of development for this project to the Town Council rather than simply denying the application.

Commissioner Kunzweiler stated that this project has been around for a long time. He stated that the Commission has been consistent in its thoughts, which have not changed, and neither has the project. He stated that a five lot design has never been acceptable. He said that simply trying to match the density of surrounding areas seemed like grasping at straws. He characterized a five lot project as a "non-starter." He was concerned with approving a project for two homes and seeing it creep up into something bigger. He stated that if a case is to be made on the financial impacts of a two lot project, the applicant needs to do much more work through the appropriate process.

Chair Fraser agreed with the other Commissioners that the project has not changed at all during the years that it has appeared before the Commission. He found it disappointing having reviewed this project for the past three years, with specific feedback provided aimed at finding a solution, and no response from the applicant. He said it feels as though the Planning Commission has been talking to itself. He said that it is hard to envision this project, as the applicant has not made the effort to properly present the project to the Commission, i.e. installing the story poles. He felt that the Commission was not given the necessary tools by the applicant in order to completely understand the project. He supported Staff's recommendation for a two lot project.

**M/S Aguirre/Kunzweiler (passed 5-0) to adopt the resolution recommending conditional approval of the Ling Precise Development Plan to the Town Council with the modified version of the two-lot project (Alternative 5) evaluated in the certified environmental impact report (EIR) for this project, with building envelopes shifted 90 feet eastward.**

**DISCUSSION ITEM**

**2. 2240 CENTRO EAST STREET: REQUEST FOR A CONDITIONAL USE PERMIT TO OPERATE A TEMPORARY CONSTRUCTION STAGING AREA ON A CURRENTLY VACANT LOT**

Planning Manager Watrous stated that a status report on the construction staging area at 2240 Centro East Street has been prepared by the Town Engineer. Mr. Watrous stated that the purpose of this meeting was to allow further discussion on issues related to this permit.

Milton Diaz stated that there have been some improvements to the operations of the staging area in the last two weeks, as the contractor has obeyed the hours of construction and done a better job of dust control. He distributed photos of dirt and materials piles on the site. He stated that he still has odor problems from the asphalt piles that have been reported to the Air quality Management District and are making his wife sick. He stated that the asphalt pile is not always covered. He said that there has been no significant traffic control provided, which has resulted in several near accidents. He stated that equipment is not being properly parked on the site. He said that the staging area has gotten better, but he hoped that consideration would be given during the review of the use permit to move the staging area to another lot. He wondered why there appeared to be only one construction crew working on the project at any time.

Dolores Davis stated that she has only asked for the safety of their home to be protected. She said that the dirt piles used to keep equipment from rolling downhill was not consistent with the requirement to install a K-rail for the protection of their home. She raised concerns regarding the amount of water draining off the site, vegetation that has been removed and a culvert that has been damaged. She stated that her house vibrates from the construction nine hours each day and she played an audio tape of construction noise and beeping from trucks backing up. She said that she would like the staging area moved to a different site during review of the use permit. She added that trucks are not being parked properly at night.

Town Engineer Nguyen stated that it is hard to put into perspective what the neighbors face with this construction project, acknowledging that construction activity is, by its nature, disruptive. He stated that the Public Works Department and the contractor have tried to mitigate what they can to address the neighbors' immediate concerns. He stated that things have improved on the site in the last two weeks, with Maggiora & Ghilotti showing their intent to do what is necessary to mitigate problems and adhere to the conditions of the use permit. He said that it is the responsibility of the Town to work with the contractor and the residents to make this project successful. He stated that if the contractor is pushed, they push back, but that the residents are of paramount concern to the Town. He said that the contractor has alluded to not putting a second crew on the job because of the neighbors' complaints. He stated that if the contractor does not comply with the conditions of approval, the Town may need to take another course of action if the abuses are too egregious. He stated that it now appears that the contractor will take a full year to complete the project.

Commissioner Kunzweiler asked how using one versus two crews would affect the operation of the staging area or compliance with the use permit. Town Engineer Nicholas Nguyen stated that this would have little to do with adherence to the requirements of the use permit.

Commissioner Aguirre asked if putting in the K-rails would indicate a good faith effort by the contractor to comply with the use permit. Town Engineer Nguyen responded that the use permits requires installation of K-rails or similar devices, and that the contractor wanted to put in a dirt berm to try to satisfy this requirement. He said that there is a concern that the berms will wash out in the winter unless properly compacted. He stated that a berm would not stop a truck rolling downhill and may not survive the winter rains.

Commissioner Aguirre stated that the Town may be headed toward revocation of the use permit. He said that he does not see good faith effort by the contractor to comply with the conditions of the use permit. He said it was not the intention of the Town to create safety and odor problems for the neighbors, but acknowledged that some of the problems result from the actual construction project.

Commissioner O'Donnell stated that he has monitored the site for the last two weeks and said that the contractor has done a pretty good job of cleaning up and covering the asphalt pile. He found the contractor's behavior of "pushing back" to be unacceptable and felt that Maggiora & Ghilotti should either make a commitment to completing the project more quickly or they would lose the staging area.

Chair Fraser stated that he also has been monitoring the site, which appears to be in pretty good shape. He said that the noise can be annoying, but it is part of a construction project. He stated that it is totally unacceptable to create a margin of error when it comes to safety, and hopes that this can be communicated to the contractor.

Commissioner Kunzweiler agreed that the Town has to take a strong stand on safety. He said that he was perplexed that the initial discussion on the staging area was to help the project go as fast as possible, but that now the contractor is choosing to take as long as possible due to neighbors' complaints.

Mike Mucinovich, Maggiora & Ghilotti representative, stated that they are doing the best they can to wet down the site, but mud tracks off the lot. He stated that using two crews would double the truck traffic through town. He said that his boss had directed him to install the berm on a trial basis and that it has worked so far. He agreed that a K-rail would survive winter better, but said that the way the trucks have been parked on the top of the site is to prevent them from going downhill.

Commissioner O'Donnell urged Maggiora & Ghilotti to do anything they can to address the neighbors' issues and move the project along.

Commissioner Aguirre stated that he wanted the contractor to adhere to the conditions of the use permit. He was concerned with not using the K-rails. He felt that there was no need for another meeting of the Planning Commission prior to the scheduled review of the use permit. In the meantime, he felt that there was time for the contractor to do their best to comply with these requirements to keep the use permit from being revoked.

Chair Fraser stated that the contractor needs to address the drainage and culvert issues with Ms. Davis.

**ADJOURNMENT**

The meeting was adjourned at 10:00 p.m.

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JIM FRASER, CHAIRMAN

ATTEST:

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SCOTT ANDERSON, SECRETARY