

Town of Tiburon
STAFF REPORT



AGENDA ITEM _____

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TO: **PLANNING COMMISSION**
FROM: **DANIEL M. WATROUS, PLANNING MANAGER**
SUBJECT: **CONDITIONAL USE PERMIT #10603**
REVIEW OF CONDITIONAL USE PERMIT TO OPERATE A TEMPORARY CONSTRUCTION STAGING AREA ON A VACANT LOT; 2240 CENTRO EAST STREET; ROLF EISELIN, OWNER; MAGGIORA & GHILOTTI, INC., APPLICANT; ASSESSOR'S PARCEL NO. 059-142-02

MEETING DATE: **OCTOBER 25, 2006** REVIEWED BY: SA

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SUMMARY

On May 31, 2006, the Planning Commission adopted Resolution No. 2006-17 approving a conditional use permit (File #10603) to operate a temporary construction staging area on property located at 2240 Centro East Street to serve the contractors working on the Lyford Cove Utility Undergrounding project. This decision was appealed to the Town Council by several neighboring property owners.

On July 5, 2006, the Town Council held a public hearing on the appeal and voted to deny the appeal, but to also modify several existing and add several more conditions of approval to the use permit. On July 19, 2006, the Town Council adopted Resolution 36-2006 memorializing the denial of the appeal and modifying the conditions of approval.

Condition of approval No. 6 of Resolution No. 36-2006 provides for review of the permit and reads as follows:

"The subject permit shall be reviewed by the Planning Commission at a public hearing three (3) months from the date of this approval to evaluate dust, noise, traffic and safety issues, along with an evaluation of alternative sites for the staging area, including the possibility of rotating the use onto other sites. Town staff shall monitor the activities on the site and the status of the undergrounding project as a whole and provide the Planning Commission with information on changes to the project to be used in the evaluation of alternative sites. The Planning Commission shall evaluate the possibility of rotating the location of the construction staging area among two or more parcels. During the review of the conditional use permit, the Planning Commission shall have the authority to modify the restrictions of this permit."

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As it has now been three months since the adoption of Resolution No. 36-2006, the use permit has been scheduled for review by the Planning Commission.

Town of Tiburon

STAFF REPORT



ANALYSIS

Dust, Noise, Traffic and Safety Issues

Since the staging area has been in operation, Town staff has received numerous complaints from residents in the vicinity about how the staging area has been operated by the contractor for the project (Maggiora & Ghilotti, Inc.). A complaint was made by one neighbor regarding these issues at the August 9 Planning Commission meeting. At that time, Staff was directed to prepare a project status report, which was presented at the August 23 meeting. After hearing testimony from Staff, the contractor and several neighboring property owners, the Commission took no action on the permit and directed Staff to continue to work with the contractor and neighbors to resolve any issues related to the staging area.

Since that meeting, the staging area and the undergrounding project as a whole have been inspected on a continuing basis by an engineering firm (Harris & Associates) hired by the Town to oversee the project. In addition, members of the Police Department have begun daily patrols of the site and project area, and Public Works Staff has also visited the site on a regular basis.

The conditional use permit for the staging area includes the following conditions of approval imposed by Planning Commission Resolution No. 2006-17 and modified by Town Council Resolution No. 36-2006:

1. *The location of the job shed, materials storage and equipment parking shall be as shown on the plans submitted to the Town of Tiburon on May 9, 2006. The job shed, construction equipment, and stockpiles of material are all present on the site. Although not all elements are situated precisely as shown on the submitted plan (for example, the shed is slightly closer to the street than shown on the plan), the overall layout of the site is generally consistent with the rough site plan submitted to the Town.*
2. *The applicant shall obtain all necessary permits from the Town Building Division for any temporary utility connections for the proposed job shed. No power is currently provided to the container on site.*
3. *The staging area shall only be utilized during hours specified within the contract with the Town of Tiburon for the Lyford Cove Utility Undergrounding project (8:00 a.m. to 5:00 p.m., Monday through Friday). Equipment on the site shall not be left running when not otherwise in operation.* Staff is aware of two occasions when the contractor worked past 5:00 p.m.; on Thursday, August 3, crews were working on site until 5:30 p.m.; and on Friday, August 4, crews were working until 6:00 p.m. On one of these occasions, the contractor had broken a gas line, which needed repair before he could leave the site. On the other occasion, repair of some damaged mail boxes was required. Staff has requested that Maggiora & Ghilotti place calls to the Police Department and to the Department of Public Works if there is ever again a need to work past 5:00 p.m. This notification would allow both

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Town of Tiburon

STAFF REPORT



departments to better inform residents who might call regarding after-hours operations.

Staff has also received complaints regarding trucks arriving at the site before 8:00 a.m.; neighboring residents have complained about hearing back-up alarms and workers talking on the site. Truck engines have been turned off once the vehicles are parked, and heavy equipment and trucks have not been started before 8:00 a.m., nor has work begun before that hour. No complaints regarding this issue have been received by the Town in recent weeks.

- The Town Engineer shall impose appropriate conditions of approval to address potential dust, noise, traffic and safety impacts that may be caused by the operation of the staging area. The Town Engineer and the contractor shall utilize Best Management Practices (BMP's) wherever appropriate to address these concerns. As part of these requirements, any construction materials stockpiled on the site shall be watered down, covered, or otherwise treated regularly to minimize any potential dust. A written description of all BMP's shall be provided by the Applicants and must be approved by the Town Engineer prior to the commencement of the use of the lot.* The contractor has submitted a standardized traffic management plan and a stormwater pollution prevention plan. The plans were approved by the Town.

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Dust and fume control: Neighboring residents have complained of persistent fumes from an uncovered stockpile of temporary backfill material, referred to as "cold mix." Upon learning of the complaint, the Town immediately contacted the contractor to mitigate the fumes. Although the stockpile would aerate over time and produce significantly less fumes, the Town requested that the stockpile be covered when not used. It took approximately 3 days for the contractor to comply in an acceptable manner. Staff has received complaints that the stockpile has not been completely covered at all times, with the cover on occasion blown off by strong winds. The Town's inspector has reported that when he arrives on the site at 7:00 a.m., he has always found the tarp to be in place.

The residents also filed at least three complaints with the Bay Area Air Quality Management District (AQMD). According to AQMD, a public nuisance is determined when five complaints of an odor are made within a 24 hour period. AQMD officials visited the site and have not issued any citations regarding the odors.

Staff has also had discussions with AQMD regarding dust impacts, which are more quantifiable nuisance than odor issues. AQMD determines dust to be a public nuisance if plumes of dust have more than 20 percent opacity, and duration of a minimum of three minutes. Neighbors have complained about dust rising from the site, including dust from stockpiled materials. AQMD has investigated these complaints but has been unable to confirm a dust nuisance. Based on Town Staff

Town of Tiburon

STAFF REPORT



observations, dust has been raised occasionally on the site, but not for more than three minutes at a time.

Noise: As noted above, the Town has received complaints about noise from trucks and employees arriving to the site before 8:00 a.m. One complaint was also received regarding noise from a loud CB radio on the site. Other noise has been difficult to distinguish from noise associated with the undergrounding project itself in the vicinity.

Traffic: The contractor has provided through access to all local residents, and has put signage in place indicating road closures when required. After discussions with the Town, the contractor has not provided a full-time “flagger” on the site. Town Staff determined that such a flagger should only be provided as stipulated in the project contract to address long-term construction safety situations for which a flagger would be necessary. The Police Department has been actively monitoring the site each day, and has yet to find a safety concern which would be addressed by use of a flagger. The Police Department has also not noted any vehicle code violations in its site monitoring.

Stormwater protection: The contractor has placed silt fences around the perimeter of the lot and open channels in compliance with Town direction. A neighboring property owner notified the Town that a drainage course on the site had been covered over by the contractor. At the direction of the Town, the contractor has since restored this drainage course to its previous condition.

5. The site shall be revegetated after completion of the project to the satisfaction of the Planning Division. Revegetation of the site has not yet been required.

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6. The subject permit shall be reviewed by the Planning Commission at a public hearing three (3) months from the date of this approval to evaluate dust, noise, traffic and safety issues, along with an evaluation of alternative sites for the staging area, including the possibility of rotating the use onto other sites. Town staff shall monitor the activities on the site and the status of the undergrounding project as a whole and provide the Planning Commission with information on changes to the project to be used in the evaluation of alternative sites. The Planning Commission shall evaluate the possibility of rotating the location of the construction staging area among two or more parcels. During the review of the conditional use permit, the Planning Commission shall have the authority to modify the restrictions of this permit. The subject review is being conducted in conformance with this requirement. The site and the undergrounding project as a whole are being monitored on a daily basis by representatives from Harris & Associates, the Town’s hired inspector for the project. In addition, Staff from the Public Works and Police Departments have periodically monitored the site. At the August 9 and 23 Planning Commission meetings, several Commissioners also indicated that they have been periodically monitoring the site.

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Town of Tiburon

STAFF REPORT



A more detailed analysis of alternative sites for the staging area is presented below.

7. All construction equipment and trucks parked on the staging area shall be parked perpendicular (sideways) to the slope or in such a manner as to minimize potential for equipment and trucks to slide downhill. "K" rails or similar devices shall be installed above the rear property line with one segment wraparound. After initial concerns were raised about incorrect equipment parking, Staff has witnessed equipment being parked correctly at all times. In lieu of K-rails, a dirt berm three feet (3') high was originally placed along the length of the bottom of the property inside the fence line for the purpose of protecting properties below from vehicle or equipment mishaps. As reported to the Planning Commission at the August 23 meeting, the Director of Public Works has determined that this vehicle protection method was consistent with the spirit of the requirement. At that meeting, the Commission expressed concerns about the appropriateness of the dirt berms, particularly during winter months. Since that time, the contractor has installed K-rails on the site.

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8. Orange construction fencing shall be placed 15 feet from the side and rear property lines to delineate a buffer between the staging area and the property lines. Orange construction fencing is in place along the rear property line, but has been replaced along the side with a silt fence to protect the drainage course that runs along the property.

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9. A flagman shall be used to direct traffic in the vicinity at all times when heavy equipment or vehicles back up from the site along Centro East Street. See Condition No. 4 (Traffic) above.

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10. The site shall be winterized in conformance with Best Management Practices. Winterization requirements went into effect on October 15. As noted above, silt fencing has been put into place near the drainage course. The contractor has indicated that they plan to place gravel on the site to further protect against erosion.

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11. The contractor shall encourage its employees to carpool or rideshare to the staging area from a site elsewhere in Tiburon. It is unknown whether the contractor has encouraged its employees to carpool or rideshare to the staging area. Town Staff has not witnessed any over-crowded parking situations in the area, and has not received any such complaints from neighborhood residents.

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12. The Town reserves the right to amend or revoke this Conditional Use Permit for cause in accordance with adopted regulations of the Town. As noted under Condition of Approval No. 6 above, the Planning Commission may amend the subject conditional use permit at this hearing.

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Town of Tiburon

STAFF REPORT



13. *This conditional use permit approval is temporary and shall expire and become null and void as of July 5, 2007, unless extended for a period not to exceed six (6) months by the Director of Community Development to allow completion of the Lyford Cove Utility Undergrounding project.* It is currently anticipated that the undergrounding project shall be completed by or shortly after July 5, 2007.

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Alternative Staging Area Sites

During the initial review of the subject use permit, concerns were raised that the contractor had not adequately explored alternative locations for the construction staging area. The following sites have previously been identified as possible alternative locations for the staging area:

2359 Paradise Drive: This vacant lot was identified during the initial review of the use permit as a potential alternative site for the staging area within the undergrounding project area. Concerns were raised at the time about the suitability of this lot due to its terraced terrain and the location of a fire hydrant directly in front of the site, but the direct access from Paradise Drive was considered to be an advantage. The site is bordered by homes on three sides, raising the concern that the potential impacts of the staging area would be simply transferred from one set of neighbors to another.

The contractor has approached the owners of the vacant lot to ascertain their willingness to enter into a lease to use this property as a staging area. The owners discussed this possibility extensively with Town Staff, and have declined to grant permission to use this site.

Judge Field: This vacant lot on the south side of the Tiburon Peninsula Club (TPC) property has been utilized for temporary uses in the past, most of which have been directly related to TPC. The lot is currently being used as a staging area for the construction of the expansion to the TPC facilities, and will become the parking area for the club once construction has finished. TPC officials were contacted about the possibility of using this property for the undergrounding project staging area, and have declined to grant permission to use this site.

Bottom of Lyford Drive: This vacant right-of-way area along the side of Tiburon Boulevard east of Lyford Drive has been used as a construction staging area for various projects in the past. Residents of the condominiums above the site have often complained about noise and dust associated with such uses. Truck traffic would need to pass through Downtown Tiburon to reach the undergrounding project area. The site is being used as the staging area for the Town road resurfacing projects through some time in November.

Beach Road Parking Lot: This Town-owned parking lot is situated adjacent to the tennis courts on Beach Road in between the Point Tiburon Marsh and Bayside condominium complexes. Truck traffic would need to pass through Downtown Tiburon to reach the undergrounding project area. Although this site has not been used in the past as a construction staging area, the Town offered its use to the contractor, who rejected this proposal.

Bell Market Parking Lot: The unpaved area to the west of the Bell Market store on Tiburon Boulevard has been utilized as an informal parking lot operated by Main Street Properties, but has

Town of Tiburon

STAFF REPORT



not been previously used as a construction staging area. The site is surrounded by commercial uses on three sides, with direct access from Tiburon Boulevard through the paved market parking lot. However, this lot is directly behind the Point Tiburon Marsh condominium complex, which would likely result in noise and dust concerns for these residents. Truck traffic would need to pass through Downtown Tiburon to reach the undergrounding project area. Laleh Zelinsky, the property owner, has recently filed an application with the Town to pave this lot for more formal parking use.

Romberg Center: The Romberg property is generally isolated from homes in the vicinity and contains various open areas upon which a construction staging area could be located. The site can only be reached by using Paradise Drive, which would force undergrounding project trucks to drive all the way through Old Tiburon to deposit material at the staging area, then drive back along a windy stretch of Paradise Drive to bring these materials back for use in the undergrounding project area.

The Town Council noted during its review of the appeal on the subject use permit that the premise of placing a construction staging area in the neighborhood where the undergrounding project would occur was that those who benefit from the project should also bear the burden. With the exception of the site at 2359 Paradise Drive, these alternative sites would place a portion of the burden of the impacts from the undergrounding project on residents outside the project area.

CONCLUSION

After initial concerns about Maggiora & Ghilotti's compliance with the conditions of approval of the subject use permit, the contractor now appears to be much more closely in compliance with these requirements. Town Staff has been vigorous in its monitoring and enforcement of the staging area's conditions of approval, and continues to work with the neighboring residents regarding any construction-related issues which arise related to the staging area and the undergrounding project as a whole. The Director of Public Works has indicated that he believes that the staging area serves a useful purpose for the undergrounding project, and that the staging area should be allowed to continue on this site.

The Planning Commission has previously expressed a desire to explore the possibility of rotating the location of the staging area to other sites as a means of sharing the burden of this temporary use. No viable alternative sites within the undergrounding project area have been identified for which property owners would be willing to allow this use. Other possible alternative sites exist outside the project area, but would be inconsistent with the Town Council intention that those who benefit from the project should also bear the burden.

RECOMMENDATION

Staff recommends that the Planning Commission take public testimony on this item, close the public hearing and give direction to Staff regarding any potential amendments or other action to be taken regarding the subject conditional use permit.

Town of Tiburon

STAFF REPORT



EXHIBITS

1. Planning Commission Resolution No. 2006-17
2. Town Council Resolution No. 36-2006
3. Minutes of the May 31, 2006 Planning Commission meeting
4. Minutes of the August 9, 2006 Planning Commission meeting
5. Minutes of the August 23, 2006 Planning Commission meeting
6. Minutes of the July 5, 2006 Town Council meeting
7. Memo from Director of Public Works, dated August 18, 2006
8. Memo from Acting Town Manager, dated August 31, 2006
9. Memo from Director of Public Works, dated October 11, 2006
10. Letter from Milton Diaz Perez, dated August 10, 2006
11. Letter from Milton Diaz Perez, dated October 6, 2006