

**MARIN COUNTY PLANNING COMMISSION MINUTES
DECEMBER 8, 2003
Marin County Civic Center, Room #328 - San Rafael, California**

Commissioners Present: Ross Herbertson, Chair
Allan Berland, Vice
Hank Barner
Ray Buddie (Out for Items #1-4)
Don Dickenson
Jo Julin
Steve Thompson

Commissioners Absent:

Staff Present: Alex Hinds, Agency Director
Brian C. Crawford, Deputy Director of Planning Services
Tom Lai, Principal Planner
Ben Berto, Principal Planner
Alicia Giudice, Planner
Jessica Woods, Recording Secretary

Minutes Approved on: **January 12, 2004**

Convened at 10:30 a.m.
Adjourned at 12:55 p.m.
Reconvened at 1:38 p.m.
Adjourned at 6:15 p.m.

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7. ORDINANCE: VIEW AND SUNLIGHT OBSTRUCTION FROM TREES IN THE STRAWBERRY COMMUNITY OF UNINCORPORATED MILL VALLEY

Hearing to consider recommending to the Board of Supervisors the adoption of an ordinance that would establish a process to preserve and restore views or sunlight which may have been unreasonably obstructed by tree growth. In general, this process would establish the right of persons to preserve and seek restoration of private views or sunlight that existed since they purchased their property, prohibit the unreasonable obstruction of such views or sunlight, establish criteria for determining unreasonable obstruction or views or sunlight, describe possible restorative actions and guidelines concerning such actions, and establish a tiered process for resolution of obstruction disputes. The dispute resolution process may include initial reconciliation, mediation, tree claim preparation, binding arbitration, and litigation. Other ordinance options to be considered include restoration of views that existed prior to the current property ownership, and consideration of tree benefits to property owners and the community. The draft ordinance would apply only to the unincorporated Strawberry Community generally bounded by Highway 101 to the west, the Corte Madera Town limits to the north, and the Town of Tiburon limits to the east, and Richardson Bay to the south.

Ben Berto, Principal Planner, summarized the background and merits of the subject ordinance as set forth in the staff report, recommending that subsequent to holding a public hearing, this matter be continued to a future date in order to allow staff to respond to comments and issues raised in the report and today's hearing.

Commissioner Dickenson expressed concern regarding the phrase "*constitutes a public nuisance.*" Staff responded that they took that language from the Tiburon Ordinance and if that clause were removed, it would not cause problems for the remainder of the ordinance.

Commissioner Buddie expected that an unreasonable obstruction is being defined or found to "*constitute a public nuisance*" to create a cause of action in the courts and without this language in the ordinance, a lawsuit could not be brought against a neighbor for a nuisance. Between now and the date in which this matter is further considered by the Commission, staff would confirm and provide additional analysis to the extent that it is necessary.

Commissioner Julin expressed concern for the use of the word "*must*" as well as the use of the word "*would.*" Staff responded that the intention is to provide a very clear process that must be followed. He further explained that it sets forth the hope that it could be resolved at an earlier stage rather than litigation.

Chair Herbertson commented on the dispute resolution process and asked staff if the binding arbitration would also be voluntary. Staff responded that it is a voluntary action on the part of the tree owner. However, the complaining party must offer in writing to submit the resolution to binding arbitration. Chair Herbertson believed the only new creation from this proposal is the right for views and sunlight and they are establishing an actionable basis if that right is violated. Staff concurred.

Commissioner Buddie asked staff how the County could potentially determine that planting trees and blocking views could be a problem that would constitute a public nuisance for just this area rather than applying countywide. Some analysis is needed to determine that this is only a public nuisance for Strawberry and not throughout the County. Staff responded that similar properties are treated similarly, so for other places that had the same sort of view of the Bay this may become a precedent. Staff further added that if adopted, the ordinance could be considered for expansion in other similar situations.

Commissioner Thompson felt that the question of whether Tiburon's current ordinance has been tested should be addressed before deciding that it had been litigated and solved.

Commissioner Barner expressed concern for the definition of the draft ordinance in relation to "*active use area*" and felt it had to do with restaurants versus offices and perhaps they should use the term "*densely utilized portion*" rather than "*frequently occupied.*" He also expressed concern for the phrase "*primary living area.*" He then

discussed page 8 under “*litigation*” and asked what would happen if the complaining party declines arbitration. Staff responded that this ordinance stipulates that the complaining party must offer arbitration.

The hearing was opened to public testimony.

The following community representatives and concerned residents commented on this matter:

Geoffrey Butler, Strawberry Design Review Board Chairman
Lloyd Wiborg, Harbor Cove Homeowners Association
Maria Moller, Bay Vista Height Association
Paul Scott, attorney representing property owner at 40 Century Dr., Mill Valley
Daniel Guggenmetg, Mill Valley resident
Avril Couris, Mill Valley resident
Babette Bloch, Mill Valley resident
Greg Wolff, Mill Valley resident
Gina Ghandi, Mill Valley resident
Lou Wiener, Mill Valley resident
Sue Zimmerman, Mill Valley resident
Carol Stranzl, Mill Valley resident
Ann Marie Strandguard, Mill Valley resident
Bruce Corcoran, Mill Valley resident
Joseph Nadel, Mill Valley resident
Steve Chacko, Mill Valley resident
Tirrell Graham, Mill Valley resident
Ina Gyemant, Mill Valley resident
Ted Astorian, Mill Valley resident

General comments made in support of the ordinance were as follows:

- The general idea behind this ordinance was to create a venue to resolve issues;
- The ordinance is a professional document worthy of support;
- It is important to set a timeframe to resolve issues;
- The ordinance would address loss of property values due to view impacts;
- The purpose is to establish sunlight and views;
- There should be a spirit of cooperation, not entitlement;
- View preservation is very important;
- Having an ordinance would avoid litigation;
- Unreasonable conduct would be prevented;
- The new owners should be able to piggyback with the former owner to restore views;
- Excluding properties with CC&Rs and avoiding contractual conflicts should be clarified in the draft ordinance; and
- The value of a property is reduced without views.

Concerns raised regarding the draft ordinance and suggestions made were as follows:

- Renters cannot enter into an agreement;
- Every unincorporated area should be bound by the same ordinance, not just the Strawberry area;
- Residents with existing CC&R’s should be exempt;
- The document as proposed creates a strong bias within the community;
- Redwood trees should be exempt;
- Expressed concern for contract rights;
- The difficulty in negotiating with neighbors;

- The difficulty in dealing with CC&R's;
- Guidelines should be established for all individuals to follow;
- BCDC might have some concerns with the ordinance's impact;
- Establish a mechanism to restore previous views that were lost due to overgrowth;
- Loss of privacy issues should be addressed;
- Protection for native trees should be provided;
- The document lacks clarity;
- Consider exceptions for situations where trees are illegally trimmed or cut;
- Language must be clear in order not to take away the rights of property owners under their CC&R's;
- Fences and containers blocking views should be included;
- Eucalyptus trees in the County right-of-way are the worst;
- If a public nuisance is declared, the County could get dragged into litigation;
- The ordinance confiscates property;
- If someone wants a view across a neighbor's property, he should pay for an easement;
- Enforcement could go back 50 years – unrealistic;
- Trees hide ugly buildings;
- Native trees could become monsters;
- Pre-ownership view provisions could be contentious;
- Only the complaining party benefits;
- People outside Strawberry could use the provision against Strawberry residents;
- Retroactive provisions are unfair to a property owner with trees; and
- The provisions should only be prospective.

The hearing was closed to public testimony.

Commissioner Buddie expressed concern for the notion that the County would be establishing a mechanism that did not exist in law. He felt some guidance is needed from County Counsel regarding this issue of public nuisance. He also believed BCDC issues should be investigated as well. The entire CC&R issue should be addressed as to how that would be effective. Also, the issue of timing should be discussed and pointed out that Redwood trees are native and disagreed with calling them “undesirable.” Overall, there are certain trees that are a nuisance, for example Eucalyptus trees, and maybe they should focus on a certain type of tree in relation to creating a public nuisance.

Commissioner Dickenson agreed with Commissioner Buddie. He added that the benefit is not clear and believed an attempt to figure out what the majority of individuals desired is appropriate. He further noted that at this point he is not convinced that this ordinance is a good idea and noted that there are several unanswered questions.

Commissioner Berland expressed several concerns for this ordinance in relation to public policy issues. He desired an environmental review before moving forward. He also did not believe this would advance public welfare. He further felt this ordinance would be discriminatory.

Commissioner Julin did not believe the ordinance would benefit the public and felt she would better serve the public by not being involved.

Commissioner Barner noted his confusion over an ordinance in which the County has no ability to act. He also agreed with Commissioner Julin that the Commission should not legislate behavior between neighbors.

Commissioner Thompson believed that views, sunlight, and privacy are all equally valuable and this ordinance did not take a balance view of those three factors and did not clarify how that issue would be resolved. He recommended setting guidelines that protected views and privacy and offer guidelines as help to individuals. He also added that if they move forward the Commission has received a substantial amount of material that would

allow the Commission to make some progress in the right direction. He further appreciated all the material submitted for the Commission's review.

Chair Herbertson seemed that there is one essential question, which is "*shall the County establish a new legal right or not?*" If the answer is "yes" then they must be very careful for unintended consequences. He asked if the loss of sun adjacent to a house is different from the loss of sun inside a home. He felt that all the differences in the ordinance would create an internal paradox. He further added that if the County is establishing the rights to view and sunlight, then the County should establish that on a countywide basis and declare it a civil matter. He further believed it is not the County's business to create that right.

Staff explained that this particular hearing is not to make a final decisions whether to make a recommendation to the Board of Supervisions as to whether or not the ordinance should be adopted or not. Staff strongly sensed that the Commission has some reservations as to whether or not the County should even pursue this type of ordinance if that is the case, the Commission should start with the fundamental question of whether this ordinance should be pursued. Staff added that if there is a consensus that this is not an item that the County should spend additional time on, then the Commission could provide direction to staff to come back at a future meeting to discuss if and when the ordinance should be revisited.

Chair Herbertson suggested asking the Board of Supervisors if they desired to commission a survey as to whether this is an issue in the County that individuals cared about.

Commissioner Buddie hesitated to request staff to spend additional time and money moving forward with the ordinance in its current form. He also wondered if the problem is not more defined than they believed. He further suggested that there might be certain types of undesirable vegetation that could be abated.

Commissioner Dickenson explained to the Commission that he is not convinced that an ordinance abandoning certain types of trees is appropriate because it depends on the setting.

Commissioner Barner asked if this issue could be addressed in the Strawberry Community Plan in order to give residents an opportunity to provide guidance as to how to resolve what is in their view a community problem. Staff responded that view preservation as it relates to new construction and required landscaping could be addressed in the Strawberry Community Plan, but it is important to distinguish this ordinance from the Community Plan, Zoning, or General Plan because the ordinance before the Commission did not involve amending any of those documents. He pointed out that the draft ordinance is essentially a dispute resolution process without any County enforcement. However, staff would be opposed to incorporating this type of ordinance in the Community Plan, Zoning, or General Plan because it could be construed as meaning that the County would have some type of enforcement responsibilities.

Staff pointed out that different areas have different needs, and staff did not believe it would be that difficult to send out a very simple questionnaire to help understand whether there is a sense among the community as a whole whether they support this ordinance. He further believed that equal protection and public nuisance issue as raised by the Commission will need to be addressed to further proceed.

Commissioner Thompson discussed BCDC and noted that to his knowledge they required vegetation to create privacy in places where public pathways were immediately adjacent to individual decks. As a result, a conflict resolution was established such that if the screening is not provided, then the home is exposed, but if the screening grows, views are lost.

Commissioner Thompson left the meeting at 5:45 p.m.

Commissioner Buddie supported staff's direction.

Chair Herbertson agreed. He felt the Commission could prioritize the different tasks and report back to the Commission at an appropriate time. Staff suggested continuing the matter to February 23, 2004 for a follow-up report of concerns raised by the Commission and revisit the fundamental question as to whether this is an issue that the Commission desired to pursue further.

M/s Dickenson/Julin, and unanimously passed of those present, to continue this matter to the February 23, 2004 Planning Commission meeting. Motion passed 6/0. (Commissioner Thompson not present).

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