

MARIN COUNTY PLANNING COMMISSION MINUTES
February 9, 2004
Marin County Civic Center, Room #328 - San Rafael, California

Commissioners Present: Allan Berland
Steve Thompson
Hank Barner
Ray Buddie
Don Dickenson
Jo Julin
Wade Holland

Commissioners Absent:

Staff Present: Alex Hinds, Agency Director
Eric Steger, Senior Civil Engineer
Ben Berto, Principal Planner
Jessica Woods, Recording Secretary

Minutes Approved on: **February 23, 2004**

Convened at 1:00 p.m.
Adjourned at 3:45 p.m.

1. ROUTINE TRANSACTIONS:

- a. M/s, Julin/Barner, and passed unanimously of those present, to incorporate the staff reports into the Minutes. Motion passed 6/0 (Commissioner Buddie absent).
- b. Continuances- None

2. COMMUNICATIONS

The Commission acknowledged additional correspondence received.

3. OPEN TIME FOR PUBLIC EXPRESSION, LIMITED TO THREE MINUTES PER SPEAKER

Bruce Corcoran, 184 Great Circle Dr., Mill Valley, reiterated his concerns related to the Strawberry Village Shopping Center traffic issue of what he believed to be a miscalculation of the formula to arrive at the traffic impact fees the applicants paid, which his memo dated January 12, 2004 outlined. He further noted that he has not received a letter from staff in that regard.

Commissioner Dickenson requested that staff provide both memos to Mr. Corcoran for his review and then discuss the issue under Director's Oral Report. The Commission agreed.

4. DEPARTMENT OF PUBLIC WORKS GRADING NOTICE OF VIOLATION AND STOP WORK NOTICE: CATHOLIC YOUTH ORGANIZATION APPEAL DPW

Catholic Youth Organization appeal of the Department of Public Works Notice of Violation and stop work notice for excavation, grading and filling without a grading permit. The subject property is located at **One St. Vincent Drive, San Rafael**, and is further identified as **Assessor's Parcels 155-010-69 & 76**.

Eric Steger, Senior Civil Engineer, summarized staff's memorandum and announced that staff recently received a letter from the Catholic Charities CYO requesting the withdrawal of its appeal that a grading permit is required for work on the subject property. Catholic Charities CYO has also submitted a grading permit application. Since the appellant has requested withdrawing their appeal and has applied for a grading permit, DPW staff recommended that the Planning Commission accept the withdrawal of appeal. Staff further added that the Notice of Violation and stop work notice remains in effect until a grading permit is issued by DPW.

Commissioner Dickenson noted for the record that he had been aware of this situation for about five years. He pointed out that during public open time at one of Silveira/St. Vincent's Task Force hearings he distributed photographs of the fill that was occurring and requested a report of the status and what was permitted. He then expressed concern on the following: the amount of fill; the erosion control plan not being in place; that the contours on the north side did not correspond; that the topo map did not indicate the wetland area between the railroad tracks and the fill; and that the height of the mound had increased significantly. Staff responded that they have had discussions with the contractor about erosion control and at this time, they are at the beginning stage of processing the application that should address the other issues, but appreciated the information being provided.

Commissioner Julin asked staff if the grading application would be processed and decided at staff level or forwarded to the Planning Commission. Staff responded that it would come before the Commission on appeal only.

Commissioner Julin believed a clear statement on staff's part should be made that this kind of process is not what the community expects or endorses. She further hoped that the County would adhere to the intent of the policies in the ordinance as it processes and analyzes this particular application.

Chairman Berland concurred with Commissioner Julin's comments. He pointed out that in this particular situation the purported reason for this fill is to move agricultural buildings. He believed that a grading permit would be required in connection with that removal of agricultural buildings and asked staff if that would come before the Commission. Alex Hinds, Agency Director, responded that there are understandably a lot of exemptions for agriculturalist because they are very time sensitive. Staff added that the County is very fortunate to have a strong Agricultural Advisory Board that have a good sense of what is a legitimate agricultural activity and what is not. Staff noted that this request would be referred to the Agricultural Advisory Board for their review and recommendations would be made accordingly to Public Works.

Mr. Steger noted that the Grading Ordinance would be revised as a result of this matter. Staff explained that they would be added to the next Agricultural Advisory Board agenda to discuss this issue.

Commissioner Thompson suggested including in any action taken today that they might instruct that there is a major difference in filling for agricultural purposes and fill disposal.

The hearing was open to the public

Rosalie Caesair, concerned resident, agreed with the Commission's comments and pointed out that all fill was imported from Marin County. She expressed concern for traffic on her one-lane dirt road along with all the debris and dust impacts. She further believed St. Vincent's CYO should be investigated and stopped.

Commissioner Barner asked Ms. Caseair if the dirt trucks are still operating. Ms. Caseair responded that the activity had stopped.

Commissioner Dickenson asked Public Works staff to investigate the equipment on-site. Staff agreed.

George Silveira, concerned citizen, read a letter into the record for the Commission's consideration opposed to St. Vincent's CYO operations in relation to the fill on-site. He believed the following is occurring:

- Those in authority at CYO are getting free fill improvements to their wetland property that they hope to someday use, possibly for non-agricultural purposes;
- Contractors are dumping at the site at no cost thus avoiding the high fees at the Novato landfill; and
- One contractor has even set up a mobile rock crusher and has other equipment nearby where he processes fill material and removed creek material for use and sale.

Mr. Silveira desired from the authorities involved in reviewing this matter is to give equal consideration and treatment for Silveira. He further invited the Commission's questions in regard to this matter.

Commissioner Holland asked Mr. Silveira if the rock crushing operation is still occurring. Mr. Silveira responded that the rock crushing operation had stopped.

Kathy Loury, Marin Conservation League, asked the Commission to support staff's recommendation.

The hearing was closed to the public.

Commissioner Julin asked staff what the job log represented. Staff responded that the job log was a response by the contractor showing the sources of material hauled to the job site. Staff also added that the job log is over a number of years.

Chairman Berland noted that inappropriate material might be in the landfill and asked County Counsel if a permit is needed. County Counsel David Zaltsman responded that he had not reviewed enough information at this point to make that determination. County Counsel Zaltsman added that once the CEQA review is conducted that information would be shared with other agencies.

Commissioner Buddie felt it would be helpful if staff required independent soil borings and water analysis in order to figure out if there are containments in the soil that must be addressed. Commissioner Thompson concurred with Commissioner Buddie's comments.

Commissioner Dickenson desired Public Works staff to investigate the creek operations as well. Staff agreed.

Commissioner Holland asked staff if individuals are allowed to dump at the CYO site at no cost. Staff responded in that they know of only one contractor using the site and that CYO claims they are not charging the contractor. Commissioner Holland believed an investigation into whether CYO has a business license in the case that they are charging contractors to dump fill on that site. Staff agreed to investigate.

M/s, Buddie/Holland, and passed unanimously to accept withdrawal of the appeal and direct staff to report back on the matters addressed by the Commission at a later date along with a status report in order to determine what involvement if any the Commission should pursue in the future. Motion passed 7/0.

Commissioner Thompson suggested that in addition to creating a program for borings and water analysis that an investigation should take place in regard to quarrying creek beds off-site.

Commissioner Dickenson discussed the amount of fill on-site and asked staff what would occur if the applicant decided not to pursue the application. Staff responded that the permit would address any sort of mitigation

measures that are needed. Staff further stated that if the applicant did not complete the permit process, the Department of Public Works would pursue the matter under County Code Chapter 1.05 –*Nuisance Abatement*.

Commissioner Julin felt it would be appropriate to reiterate the motion included in the staff report. She also recommended adding the following: *“that if this application is not completed or pursued, then that fill which has been placed illegally to date shall be removed within six months.”*

Commissioner Dickenson wondered what discretion the Commission had other than recommending because the appeal was withdrawn and the issue is not before the Commission. He felt direction was provided to staff, but beyond that the Commission cannot start specifying any issues into a motion. Staff agreed. Staff explained that the Commission must act on what is on the agenda, but felt general direction and recommendations to staff is appropriate.

Commissioner Buddie asked staff at the next meeting to provide a short memo of the items that the Commission requested be investigated for review and consideration. Staff agreed.

5. DIRECTOR'S ORAL REPORT

a. Status report on Countywide Plan Update

Ben Berto, Principal Planner, noted for the record that Mr. Corcoran provided a fax number to staff in which both memorandums were faxed last week. He apologized if Mr. Corcoran did not receive the fax. He further added that both memorandums are rather brief and invited the Commission's questions.

Commissioner Dickenson appreciated staff's written response and noted that his concerns had been addressed.

The hearing was open to the public.

Mr. Corcoran disagreed with the procedure and felt staff's written response should have been mailed to him for review. He believed his concerns are straightforward and not subjective as shown in his letter dated January 12, 2004. He reiterated that Marin County had been cheated out of \$50,000. He also stated that staff's written response did not address his concerns or his letter dated January 12, 2004. He further explained that he is not satisfied by staff's written response and desired a response from the Commission.

Chairman Berland responded that staff reviewed Mr. Corcoran's contentions and in staff's belief the formula was correctly applied and the Commission must rely on staff's opinion.

Mr. Corcoran pointed out that when there is a negative declaration they are bound by CEQA rules and under CEQA his testimony, letters and fax must be given equal review to other so-called testimony and not dismissed. Staff suggested meeting with Mr. Corcoran to review the calculations and if Mr. Corcoran remains concerned that he bring this matter back at the next Planning Commission hearing under the "Public Expression" portion of the agenda. Commissioner Barner announced that the next meeting is February 23, 2004.

Commissioner Buddie asked staff if this issue is within the Commission's ability to make a determination and desired guidance from staff. Staff responded that calculations are made by Public Works staff, but in this case because the traffic mitigations were part of the mitigated negative declaration considered by this Commission, staff felt it would be helpful for this Commission to be aware of this residual concern.

Commissioner Thompson noted that the new development code has an entire section called "Interpretation" and in that section it provides for appeals and staff would make those decisions.

Commissioner Dickenson stated that the dollar amount of the fee was established in the conditions of approval by this Commission, but those conditions were never appealed to the Board of Supervisors. He reiterated that the County's experts reviewed Mr. Corcoran's information, but reached a different opinion.

Chairman Berland pointed out that the Commission has no legal jurisdiction to change the conditions since action was taken and not appealed. He then recommended that Mr. Corcoran work with staff to resolve his concerns.

Mr. Corcoran discussed County Code Section 24.03.02 under Section "D" that in his view might give this Commission authority as follows: *"If plans are inadvertently approved containing elements which do not meet the minimum standards contained herein, and said non conforming elements were called to the attention of the agency, then those elements shall be redesigned and if already built, reconstructed to meet the standards that would have been imposed had the non conforming elements been brought to the attention of the agency."* Chairman Berland responded that the Commission's action is final and there is no legal manner to reverse that decision and suggested that Mr. Corcoran discuss the matter with staff in order to resolve the differences to his satisfaction.

The hearing was closed to the public.

b. Report on On-Going/Pending Development Projects

Mr. Hinds reported to the Commission that he met with the League of Women Voters discussing the Countywide Plan as well as meeting with several other individual groups later this week discussing the Plan. Staff announced that invitations were provided to various cities and towns around the County for those that wished to have a presentation as well. Staff also noted that there would be a Public Workshop on Monday, February 23rd and an EIR Public Scoping Seession on Thursday, March 24th. Staff also indicated that March 8th, 9th, and 10th would be the first Planning Commission workshops with the first hearing on March 15th and a joint workshop with the Board of Supervisors on March 16th. Staff then provided photo simulations to the Commission on some great conceptual renderings of how Strawberry and Marinwood could appear. Staff further added that the GIS maps are looking great and felt it graphically portrays that there are mechanisms to control growth.

Commissioner Barner asked staff to provide the Commission with a master list of dates for Planning Commission hearings and Workshops. Staff agreed.

Staff further added that the Countywide Plan should be distributed later this week.

6. APPROVAL OF MINUTES – JANUARY 26, 2004

Commissioner Holland pointed out a series of incorrect dates in the footers that must be addressed. He also noted a page set up problem that must be addressed as well because the Commission is unable to print out a copy with page numbers.

The Commission provided staff corrections to the Minutes of January 26, 2004 to be revised.

M/s, Julin/Thompson, and passed of those present, to approve the Minutes of January 26, 2004, as amended. Motion passed 6/0 (Commissioner Holland abstained).

7. BUDGET PRIORITIES

Mr. Hinds suggested reviewing the goals and priorities for this fiscal year in order to focus the Commission's input.

Commissioner Julin requested that staff provide a list of existing staff members with the County for her review. Staff agreed.

Commissioner Barner suggested focusing on community plans when appropriate. He also recommended sending a letter to black point residents in order for residents to have a better understanding about timing. Staff agreed.

8. UPDATE ON BOARD OF SUPERVISORS ACTIONS

February 10, 2004: Bicardo/Fitzgerald Design Review Appeal, San Rafael

February 24, 2004: Pappas Design Review Appeal, San Anselmo

9. FUTURE AGENDA DISCUSSION ITEMS, FIELD TRIPS

February 23, 2004: Strawberry View Control Ordinance, Strawberry
Braun Design Review, Kentfield

March 8, 2004: Oak View Master Plan, San Rafael

March 9, 2004: Countywide Plan Workshop