

**MARIN COUNTY PLANNING COMMISSION MINUTES**  
**February 23, 2004**  
**Marin County Civic Center, Room #328 - San Rafael, California**

*Commissioners Present:* Allan Berland, Chairman  
Steve Thompson, Vice (Out for Item #1)  
Hank Barner  
Ray Buddie (Out for Items #1-3)  
Don Dickenson  
Wade Holland  
Jo Julin

*Commissioners Absent:*

*Staff Present:* Alex Hinds, Agency Director  
Brian Crawford, Deputy Director  
Ben Berto, Principal Planner  
Eric Steger, Senior Civil Engineer  
Megan Basinger, Assistant Planner  
Jessica Woods, Recording Secretary

*Minutes Approved on:* **March 8, 2004**

Convened at 10:30 a.m.  
Adjourned at 1:15 p.m.  
Reconvened 1:50 p.m.  
Readjourned at 4:26 p.m.

1. ROUTINE TRANSACTIONS:

- a. M/s, Holland/Julin, and passed unanimously of those present, to incorporate the staff reports into the Minutes. Motion passed 5/0 (Commissioner Buddie and Commissioner Thompson 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, concerned resident, noted a letter he submitted regarding the traffic impact fees for the Strawberry Village Shopping Center and desired to discuss his letter with the Commission.

Commissioner Dickenson responded that the Commission just received the letter and recommended that they continue discussion to the March 8, 2004 hearing in order for the Commission to review the letter. The Commission, staff and Mr. Corcoran agreed.

Commissioner Barner believed the Commission should review their methodology and if more funds could be generated for the County it should be investigated.

Commissioner Dickenson requested that County Counsel be in attendance at the next hearing as well to comment on the scope of the Planning Commission's discretion in this matter.

M/s, Barner/Dickenson, that a general discussion on the County's traffic mitigation fees be added to the March 8, 2004 agenda for further discussion. Motion failed 2/4.

M/s, Dickenson/Holland, and passed unanimously of those present, to schedule as a discussion item for the meeting of March 8, 2004, the traffic mitigation fee calculation for the Strawberry Village Shopping Center. Motion passed 6/0 (Commissioner Buddie not present.)

Commissioner Dickenson noted for the record that subsequent to the meeting on the St. Vincent/Silveira project he received a telephone call from George Silveira indicating that as of Friday they started removing the rock crushing equipment.

#### 4. DESIGN REVIEW: BRAUN

Application to consider a proposal to remove two existing residences and site improvements and construct a 14,709 square foot residence that includes a 2,350 square foot basement that will be used as living space and new a 1,076 square foot attached garage. Also included in the proposal is the construction of: 1) a detached cabana; in-ground swimming pool; refaced driveway bridge; and a wrought iron entry gate that is flanked by two stone columns. Development on the site will total 14,709 square feet resulting in a floor area ratio (FAR) of 19.9%. The proposed fireside terrace feature includes an outdoor fireplace and a 13.5-foot high trellis structure. One of the two existing driveways and crossings along the property's frontage on Tamalpais Creek will be abandoned and re-landscaped as part of a creek preservation plan that includes extensive re-vegetation of the stream conservation area along Tamalpais Creek and an un-named ephemeral stream along the rear of the property. The subject properties are located at **310 and 314 Woodland Road, Kentfield**, and are further identified as **Assessor's Parcels 074-241-04 and 05**. These parcels would be merged into a single development site to accommodate the proposal.

Megan Basinger, Assistant Planner, summarized the staff report and the resolution and recommended that the Commission deny the Braun Design Review application without prejudice and allow the applicant the opportunity to return to the Commission with a revised and downscaled project that addresses the issues of community character, size, and compliance with the Stream Conservation Area requirements.

Commissioner Dickenson asked Public Works if any of the site is within the 100 year FEMA flood plain. Eric Steger, Senior Civil Engineer, responded that the FEMA flood plain did not extend that far.

Commissioner Dickenson discussed the height limit and asked staff how high the finished floor is above existing grade. Ms. Basinger responded that the 29 feet indicated in the staff report would be the maximum, which is 29 feet above the existing grade.

Commissioner Dickenson discussed the calculations of the floor area ratio and asked staff if that was reconciled as discussed in Attachment "11A." Ms. Basinger responded that the attachment is based on previous information supplied by staff, so the reference in the letter from the KWPOA was a reference to an earlier version of the plan.

Commissioner Dickenson commented on the valley oak and felt there was an attempt to save the oak in the plans and asked staff if it is realistic to assume that the tree would be saved. Ms. Basinger deferred that question to the applicant's landscape architect.

Aaron Braun, applicant, stated that he is present to discuss the merits and impact of his project. He thanked staff for the time they worked on this project and noted that he appreciated their feedback. He added that the two lots that this project represents could accommodate this project as well as the architectural design. He indicated that a large number of trees would be saved, which was a priority. He explained that they moved the outdoor living space away from the neighbors and increased the buffer between all the neighbors except for the northerly neighbor. They also decreased the amount of impervious surfaces and believed the overall impacts are minimal. He stated that the impact of this project regardless of its size is less than those approved over the years. He pointed out that the impact mainly rests on their northerly neighbor, which is a visual impact that exists due to a systematic reduction of the natural buffer. He felt that based on merits and lack of impact to the overall community, he is comfortable with the project and noted that it would be an asset to the community. He further indicated that his team is present to answer any questions.

Commissioner Barner asked staff when the story poles were removed. Ms. Basinger responded that the last set was removed in late November.

Commissioner Barner asked the applicant to discuss the outdoor fireplace. Michael Yandle, landscape architect, responded that the fireplace has a spark arrestor for fire protection. He explained that most likely it would be used during the evening for recreational purposes.

Commissioner Holland asked staff if the policies of the Kentfield Homeowners Association have restrictions on visibility from the road. Ms. Basinger responded that the policy did not state specific areas.

Commissioner Holland asked the applicant if the last set of story poles reflected the project as proposed. Mr. Braun responded in the affirmative. Commissioner Holland asked staff to provide photographs to the Commission of the story poles for their review. Ms. Basinger provided the photographs to Commission.

The hearing was open to the public.

Arlene Dinges, KWPOA, noted that the Committee supports staff's recommendation and the basic concepts for denial and urged the Commission to vote in that manner. She added that a cap of 10,000 square feet might not be compatible and recommended caution in excavating a basement in that location. She further noted that the Committee must review the final design project before supporting this project.

Rick Moran, concerned neighbor, opposed the project due to the following: scale, loss of privacy, views, and seclusion.

Erin Becker, concerned neighbor, had no objection to the proposed project. She then discussed screening and explained that the removal of several trees by the Moran's has impacted her privacy and invited the Commission to visit the site to better understand. She noted her confusion in relation to property owners cutting down trees and removing shrubs in relation to screening adjacent properties and asked the Commission for guidance.

Barry Evergettis, KWPOA, opposed the project and indicated that this proposed project is very visible and the scale and mass of the project is not appropriate in this neighborhood. He added that this proposed project violates several provisions and pointed out that it is an overwhelming project that impacts the views, privacy, and open space of the neighborhood. He further requested that the Commission accept staff's recommendation of denial. He then stated that KWPOA are in the process of preparing new guidelines.

Jim Kelly, general contractor, pointed out that he personally installed the story poles on five different occasions. He also explained that the outdoor fireplace has the same requirements as an inside fireplace. He further believed the project should be approved based on the character of the lot and the visual impacts being minimal.

Gary Shemano, concerned resident, discussed the future of Kent Woodlands and in his opinion Mr. Braun's project would reduce the traffic and enhance the community. He further believed this project would be a great addition to the neighborhood and noted his support.

Dave Van Den Berg, concerned resident, favored the proposed project and pointed out that it meets the setback requirements. He added that screening in combination with good architecture could provide a great solution. He further stated that he views over 100 homes in Kent Woodlands, and believed that Mr. Braun's home would be less obtrusive. He then urged the Commission to support this project.

Bruce Raabe, concerned resident, favored Mr. Braun's project and hoped the Commission would review the project in relation to land use policies regardless of size. He expressed concern for the cap of 10,000 square feet and believed it would create a nasty precedent.

Lindsey Merryman, concerned resident, urged the Commission to support staff's recommendation and to support the Architectural Committee because they do not feel that the two sites combined could accommodate the proposed home.

Rebecca Sylla, concerned resident, favored the project. She believed this is an appropriate site for the proposed home and urged the Commission to review the rules that are in place to mitigate the mass and view of the home. She further noted that there is a great division in Kent Woodlands in regard to construction.

Jeanie Blom, concerned resident, explained that Kent Woodlands is a wonderful place to live and all residents treasure the natural environment. She further objected to the project due to its size and the impacts on the character of the neighborhood.

David Monetta, concerned resident, expressed concern about the politics within Kent Woodlands. He explained that the non-defined rules that currently exist works best in their community. He added that there has been an attempt to establish guidelines in the form of FAR's and pointed out that any new project is difficult due to the impacts on various residents. He stated that the concept behind the bylaws and rules for the Association is to balance these matters in relation to screening and design. He then urged the Commission to reconsider the staff's recommendation and approve the Braun application.

Mr. Jones, concerned resident, pointed out that the impacts are limited due to the configuration. He believed views are largely maintained as indicated in the photo simulations.

Mr. Braun addressed the one-story issue and pointed out that on all four sides of this property there is a creek and to maintain this project within this building envelop with one-story is impossible. He further discussed projects that had been approved, as indicated in the staff report, with the average enlargement of 96% enlargement and the existing structures on these two lots is 7,000 square feet. He added that they are essentially requesting an increase that is an average and requested a favorable decision.

Ms. Dinges requested that if the Commission approved this project that an initial study be conducted due to the impacts of streams and creeks. She felt the proposed excavation of the basement needs further review. She further requested that more borings be done and to consider reductions to the project.

The hearing was closed to the public.

Staff pointed out that the purpose of denial without prejudice was to allow the applicant to submit a revised project. In that regard, staff added that a scaled down version of the home, with modification to the second story and roof massing could be considered favorable by the County. Staff also noted that Mr. Braun's architect has worked very well with staff and has been recognized in a positive light for the design of the project.

Alex Hinds, Agency Director, clarified that because of the size and complicated nature of the project, there is a recommendation that additional fees be paid.

Mr. Crawford stated that the denial of the application without prejudice is intended for a revised plan to be reviewed by the Commission. He discussed CEQA and if the Commission is inclined to support this project, then staff recommended continuing this project to determine whether this project would need environmental review after consultation with the County's Environmental Planning Coordinator. He added that if the Commission followed staff's recommendation, then staff would evaluate the revised project and come back with a determination from the Environmental Planning Coordinator.

Commissioner Thompson reviewed the resolution and clarified that it could be appealed to the Board of Supervisors. Staff concurred.

Commissioner Thompson believed the majority of problems occurring are in the redevelopment process. He agreed with the style of the building, but expressed concern for the single roofline. He further explained that if the design was more compatible with the neighborhood there would be less opposition.

Commissioner Dickenson supported staff's recommendation. He felt visibility is an issue and noted that the site is very constrained. He stated that the excavation for the basement is excessive, which would require a tremendous amount of earthmoving that would change the topography of the site. He added that if this house as proposed was to move forward, he favored an environmental study to be conducted. He also objected to indicating that a 10,000 square foot home might be appropriate. He further indicated that the streamside conservation zone should be complied with as well.

Commissioner Julin supported staff's recommendation for denial of this project. She expressed concern for compatibility with community character. She then discussed the pattern of lots in the neighborhood and the consistency that is present. She also objected to a 10,000-square-foot indicator due to the impact on the environmental qualities of the site and community character.

Commissioner Barner agreed with Commissioner Julin's comments related to community character. He added that the entire concept of precedent setting and community character did not fit. He also pointed out that a constraints analysis must be conducted in regard to the stream. He also believed a condition should be established in regard to combining the two properties into a single property. He further supported staff's recommendation.

Commissioner Holland objected to the 10,000-square-foot cap.

Chairman Berland believed this house was totally out of character with the neighborhood and, therefore, objected to the 10,000-square foot house size indication as too large. In his opinion, the house should be substantially smaller since the median size in the neighborhood was 3,369 square feet. He supported staff's recommendation to deny the application.

M/s, Dickenson/Julin, and passed unanimously of those present, to adopt the draft resolution denying the Braun Design Review application for the reasons specified in the resolution. Motion passed 6/0 (Commissioner Buddie not present).

Commissioner Holland pointed out several corrections to the draft resolution to be revised by staff. He also added language to Section A, Part 5 to read, "*the proposed residence lends itself to visual impacts.*"

Chairman Berland suggested including "*without prejudice*" into the resolution. Commissioner Dickenson believed it would be more appropriate to deny this project because it is not consistent with the Countywide Plan. He also recommended adding a reference stating, "*that staff may waive part of the fees.*" The Commission and staff agreed.

Commissioner Julin discussed page 5 of the resolution in regard to the last sentence of the first paragraph and recommended that it be deleted.

Mr. Hinds summarized the concerns of the Commission as follows:

- That the project should not be within the SCA.
- That the 10,000 square feet should not be assumed and a smaller scale design would be more appropriate.
- That the bulk and mass of the home should be broken up in regard to a single roofline in order to keep with community character.
- That the applicant should review suggestions listed by staff or establish another manner to break up the bulk and mass.

Commissioner Dickenson objected to the wording in the staff report related to 30% in regard to the second story and suggested deleting that portion. Staff agreed.

Commissioner Thompson believed the neighborhood should be respected.

Commissioner Holland discussed the mass and believed the applicant did a good job screening what currently exists. Commissioner Julin believed the square-footage should be considerably less.

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. PC04-003

A RESOLUTION DENYING THE BRAUN DESIGN REVIEW  
310/314 WOODLAND ROAD, KENTFIELD  
ASSESSOR'S PARCELS 074-241-04 AND -05

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**SECTION I: FINDINGS**

- I. WHEREAS the applicant has submitted a proposal consisting of two residentially developed parcels that will be combined to create one 73,878 square foot building site. Currently, Assessor's Parcel 074-241-04 is a 32,900 square foot lot developed with a 2,112 square foot residence, 525 square foot garage, and a swimming pool. Assessor's Parcel 074-241-05 is a 41,418 square foot lot developed with a 3,643 square foot residence, 798 square foot garage, and a swimming pool. Both residences and site improvements, including swimming pools, will be removed. The applicant proposes to construct a 14,341 square foot residence that includes a 2,350 square foot basement that will be used as living space and a 1,076 square foot attached garage. Also included in the proposal is the construction of a 368 square foot detached cabana, a 40 foot by 20 foot new pool, an improved driveway bridge on AP 074-241-04, and a 7.5 foot high wrought iron entry gate with 7.5 foot high stone columns. Development on the site will total 14,709 square feet resulting in a floor area ratio (FAR) of 19.9%. As proposed, the residence will attain a height of 29 feet above grade and will maintain the following setbacks to the nearest corresponding property lines: 74 feet from the southern front property line, 51 feet from the eastern side property line, 25 feet from the northern rear property line, and 168 feet from the western side property line. The detached 368 square foot cabana will attain a height of 21 feet above grade (measured from grade to the top of the cupola) and will be located 74 feet from the western side property line and 32 feet from the northern rear property. The proposed fireside terrace includes an outdoor fireplace and a 13.5-foot high trellis structure that will be located 52 feet from the southern front property line. The existing driveways and creek crossings will be abandoned and re-landscaped as part of a creek preservation plan that includes extensive re-vegetation of the stream conservation area along Tamalpais Creek (front property line) and an un-named ephemeral stream along the rear property line.. The subject properties are located at 310/314 Woodland Road, Kentfield and are further identified as Assessor's Parcels 074-241-04 and -05.
  
- II. WHEREAS the Marin County Planning Commission held a duly noticed public hearing February 23, 2004, to consider the merits of the project, and hear testimony in favor of and in opposition to the project.
  
- III. WHEREAS the Marin County Planning Commission finds that, pursuant to Section 15270 of the California Environmental Quality Act (CEQA) Guidelines, CEQA does not apply to projects that are denied by a public agency.
  
- IV. WHEREAS the Marin County Planning Commission finds that the proposed project is inconsistent with the Marin Countywide Plan because it is inconsistent with Policy EQ-2.3, Stream Conservation Areas, because of the proposed improvements that are located within the Stream Conservation Area.
  
- V. WHEREAS the Marin County Planning Commission finds that the proposed project is inconsistent with the following Countywide Plan and Kent Woodlands Land Use and Policy Report policies.
  - A. The proposed residence is inconsistent with the siting pattern of existing residences in the area due to its proposed location in the center of the two properties. The siting is in conflict with KWLUPR Policy CD 1.4 which stated that the replacement or expansion of existing residences should maintain the compatibility of the pre-existing development and should not substantially increase the visibility of the structure from sounding properties. The proposal consists of two lots that are developed with moderate sized, single story residences, and maintain the originally intended yard areas. The original design

concept for Kent Woodlands featured building sites that were ideally suited to preserving significant vegetation, streams, and other natural features. The siting created open, spacious yards that afford a substantial amount of privacy between homes and outdoor activity areas. The proposed siting of the residence in the center of the two lots will alter the development pattern, placing development in an area intended for yard area, and lends itself to the creation of visual impacts on surrounding properties. The proposed development is inconsistent with this policy because of its visibility from uphill locations and will be further discussed in the visual analysis section.

- B. The size of the proposed residence is inconsistent with the existing character of the community. KWLUPR Policy CD 1.5 states that the size, height, and setbacks of all new or expanded residential development shall be carefully regulated to maintain the existing character of the community and to preserve the sun, light, air, and privacy of adjacent residences. The proposed residence is inconsistent with this policy due to the square footage of the building area and the SCA setbacks for the accessory improvements.
- C. The bulk of the residence creates visual impacts on properties that are located uphill from the subject property. KWLUPR Policy CD 1.6 states that new development should be carefully sited and designed to avoid highly visible ridgeline areas and minimize interference with existing views on surrounding properties, oriented towards major visual resources. Due to the massing of the proposed residence, visual impacts from uphill properties have been identified as a significant issue. Visual Impact Analysis prepared several images of the residence at different times of year to allow for a graphic representation of the proposed residence after construction, with the installation of landscaping, and after the landscaping has become established. The residence has been sited so that it is not visible from Woodland Road, but would be visible from the property located uphill, Assessor's Parcel 074-241-01. In order to mitigate the visibility of the residence when viewed from the uphill locations, the applicant has incorporated the planting of full sized trees along the rear property line to screen the roofline of the residence.
- D. The proposed encroachments into the SCA are inconsistent with KWLUPR Policy EQ 3.1 which requires a 50-foot setback from the stream bank or the area situated 50 feet from the edge of the riparian vegetation existing along the stream bank. While a reduction of the encroachments into the SCA is being proposed, new development will be located within this area.
- E. The locations and extern of the driveway areas are inconsistent with KWLUPR Policy EQ 7.1a (7) of the KWLUPR states that driveways should be designed to provide direct access to building sites and aligned with the natural contours to minimize grading. The property is flat and does not require re-contouring of the topography, but the proposed driveway and parking areas are in conflict with this policy because they will be sited within the SCA.

VI. WHEREAS the Marin County Planning Commission finds that the proposed project, is not consistent with all of the mandatory findings to approve the Braun Design Review application (Section 22.42.060 of the Marin County Code) as specified below.

- A. **The proposed structure will properly and adequately perform or satisfy its functional requirements without being unsightly or creating incompatibility/disharmony with its locale and surrounding neighborhood.**

This finding cannot be made because the proposed project will not be in substantial harmony with its surrounding. The size of the proposed residential development will contribute to visible bulk that is out of character with the surrounding community. The strong design elements and depth of the residence do not diminish the apparent mass and bulk. While the structure would be well screened from Woodland Road by existing mature vegetation and proposed landscape improvements, its visible mass and bulk viewed from uphill locations would be detrimental to the community. Furthermore, the proposed building area is incompatible with the existing community character of



Kent Woodlands. A survey of the square footage of existing residences as well as approvals that have been granted within the vicinity established a range of 3,443 square feet to 6,321 square feet. This range establishes an inconsistency with the proposed development and the prevailing residence size in the community. A significant reduction in the square footage would allow the residence to be compatible with the existing community character.

- B. It will not impair, or substantially interfere with the development, use, or enjoyment of other property in the vicinity, including, but not limited to light, air, privacy, and views, or the orderly and pleasing development of the neighborhood as a whole, including public lands and rights-of-way.**

This finding cannot be made because the proposed project will not minimize or eliminate adverse visual effects within the surrounding neighborhood. Due to its size, bulk and mass, and siting, the proposed residence would be visible from certain locations in the neighboring area. The visibility of the proposed residence would detract from the natural aesthetics of the wooded hillside environment that characterizes Kent Woodlands. As indicated in the photo simulations, the applicant is relying on existing and proposed vegetation to screen the residence from off-site views. Revisions to the proposal, which include a reduction in total square footage and a stepping of the second story to reduce the visual impacts on neighboring properties, could create a proposal that is consistent with the existing development pattern.

- C. It will not directly, or cumulative, impair, inhibit, or limit further investment or improvements in the vicinity, on the same or other properties, including public lands and rights-of-way, conserve non-renewable energy and natural resources.**

The proposed development may impair or inhibit the future investment in the vicinity by introducing development that is inconsistent with the community character of Kent Woodlands as was discussed in Findings A and B. The inconsistency with the existing development pattern is due to the proposed building area of 14,709 square feet, where development ranges from 3,000 to 6,000 square feet.

- D. It will be properly and adequately landscaped with maximum retention of trees and other natural features and will conserve non-renewable energy and natural resources.**

This finding cannot be made because the proposed project will place new development within the Stream Conservation Areas that are identified by CWP and KWLUPR policies. The restoration of the stream will improve the current condition on Tamalpais Creek, but the overall development will place a burden on the creek and the ephemeral stream located in the rear of the properties. The applicant has provided an extensive landscape proposal that includes full size trees and shrubs to screen the residence from Woodland Road and uphill properties. The landscape proposal also includes restoration of Tamalpais Creek, which would enhance the natural resources of the area. The landscape plan provides consistency with the Kent Woodlands Land Use Policy Report Policy CD – 1.10, Landscaping.

- E. It will be in compliance with the design and locational characteristics listed in Chapter 22.16 (Planned District Development Standards) of the Marin County Development Code.**

The proposed project is inconsistent with the design and locational characteristics found in the Development Code because of the proposed improvements in the SCA, the visual bulk and mass of the residence and the requirements for accessory structure height limits. The proposed encroachments are inconsistent with Countywide Plan Policy EQ 2.3, Stream Conservation Areas, and Kent Woodlands Land Use Policy Report Policy EQ 3.1, Stream Conservation Areas.

**F. It will minimize or eliminate adverse physical or visual effects which might otherwise result from unplanned or inappropriate development, design, or placement. Adverse effects include those produced by the design and location of characteristics of the following:**

**1. The area, heights, mass, materials, and scale of structures;**

This finding cannot be made. The proposed building area of 14,709 square feet will have adverse visual effects on properties with the vicinity and will result in development that is out of scale with neighboring properties. The incompatibility of the proposed residence is in conflict with Kent Woodlands Land Use Policy Report Policies CD 1.4 and 1.5 that require development to maintain the existing character of the community. Analysis of the square footage of existing residences has determined that a significant reduction in square footage would need to be accommodated to allow the residence to be compatible with existing development.

**2. Drainage systems and appurtenant structures;**

The proposed drainage systems have been reviewed and accepted by the Department of Public Works.

**3. Cut and fill or the reforming of the natural terrain, and appurtenant structures (e.g. retaining walls and bulkheads);**

The development is proposed on a flat parcel that will not require the construction of retaining walls or require reforming of the natural terrain beyond the proposed excavation. The proposal includes the removal of the two existing swimming pool and the construction of a new pool, as well as excavation of basement. The proposed amount of excavation is 1,200 cubic yards and fill is 400 cubic yards.

**4. Areas, paths, and rights-of-way for the containment, movement or general circulation of animals, conveyances, persons, vehicles, and watercraft; and**

The proposal will not interfere with existing pathways or rights-of-way for persons, animals, vehicles, or watercraft.

**5. Will not result in the elimination of significant sun and light exposure, views, vistas, and privacy to adjacent properties.**

This finding cannot be made. As proposed, the residence will result in a loss of views and vistas from properties located uphill from the project site. Due to the visual impacts on surrounding properties, the proposal is inconsistent with Kent Woodlands Land Use Policy Report Policy CD 1.6 Visual Resources, which discourages development that interferes with existing views. In order to alleviate this impact, the massing of the upper level, approximately 5,571 square feet, would need to be significantly reduced and of a stepped design.

**G. It includes features which foster energy and natural resource conservation while maintaining the character of the community.**

This finding cannot be made in entirety. While the project has incorporated green building principles that would allow it to obtain a "Gold" rating, its total square footage, bulk and mass are inconsistent with the existing community character.

**H. The design, location, size, and operating characteristics of the proposed use are consistent with the Countywide Plan and applicable zoning district regulations, are compatible with the existing and future land uses in the vicinity, and will not be detrimental to the public interest, health, safety, convenience, or welfare of the County.**

This finding cannot be made because the proposed project will not be in substantial harmony with its surrounding including its location and size. The size of the proposed residential development will contribute to visible bulk that is out of character with the surrounding community. The project is inconsistent with the Countywide Plan because of the proposed encroachments in the Stream Conservation Areas. The proposal is also inconsistent with the following policies in the Kent Woodlands Land Use Policy Report.

**SECTION III: DECISION**

NOW, THEREFORE BE IT FURTHER RESOLVED that the Marin County Planning Commission hereby denies the Braun Design Review based on the inability to make all of the mandatory findings for grant of Design Review pursuant to Section 22.42.060 of the Marin County Code.

**SECTION IV: APPEAL RIGHTS**

NOW, THEREFORE BE IT RESOLVED that this decision is final unless appealed to the Marin County Board of Supervisors. A Petition for Appeal and a \$675.00 filing fee must be submitted in the Community Development Agency - Planning Division, Room 308, Civic Center, San Rafael, no later than **4:00 p.m. on March 4, 2004.**

**SECTION V: VOTE**

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin, State of California, on the 23<sup>rd</sup> day of February, 2004, by the following vote to wit:

AYES: Barner, Berland, Dickenson, Julin, Holland, Thompson

NOES:

ABSENT: Buddie

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ALLEN BERLAND, CHAIR  
MARIN COUNTY PLANNING COMMISSION

Attest:

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Alexandra Morales  
Planning Commission Secretary

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

Continued 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. 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 staff report and resolution and recommended that the Commission conduct a public hearing and consider the following options:

1. Proceed with continued work on the proposed draft ordinance with additional revisions as determined appropriate by the Commission; or
2. Proceed with a substantially different ordinance, for example, one addressing certain types of undesirable trees, and/or other substantive changes from the current draft ordinance; or
3. Postpone continued work on a draft ordinance; or
4. Discontinue work on a draft ordinance relating to private rights to views as they are affected by trees.

Commissioner Barner questioned if the ordinance established a new right and that question had not been answered. Staff responded that absent the establishment of a new private right to views, the current situation would continue.

Commissioner Barner expressed concern as to whether or not this is an ordinance. Mr. Hinds responded that this is an ordinance that establishes a dispute process for which the County has no enforcement authority.

Commissioner Thompson expressed concern for views, privacy, sunlight, and landscaping. He also felt it might be more appropriate to consider this document as a landscape guideline. Mr. Berto noted that revisions to the purpose statement of the draft ordinance include privacy as a factor.

Geoffrey Butler, Strawberry DRB Chair, deferred his comments to the end of public testimony.

The hearing was open to the public.

Community group representatives and interested parties Terrell Graham, Lloyd Wiborg, Ina Gyemant, Daniel Guggenheim, Bruce Corcoran, Marie Moeller, Sydney Bloch, Diane Cummings, John Leonard, Derek Hudson, Greg Wolff, Jeanne Sparks, and Sue Zimmerman commented on the draft ordinance. General comments made were as follows:

Terrel Graham, concerned resident, representing the Strawberry Recreation District Board, pointed out that Mr. Ruben wrote a letter to this Commission after the December 8<sup>th</sup> meeting indicating that if this moved forward that they desired a survey. She also agreed with privacy and trees being included in the document, but asked what recourse would residents have in relation to current problems. She further expressed concern for the language "*permanent action*" and requested that the language be defined.

Lloyd Wiborg, concerned resident, representing Harbor Cove Way Homeowners Association, viewed an apparent contradiction in the ordinance between 23.20.70, 23.20.10 and 23.20.30 and asked that it be addressed. He further pointed out that BCDC was not addressed at all and felt that should be discussed.

Ina Gyemant, concerned resident, noted that a letter that was submitted at the December 8<sup>th</sup> meeting that was not included in the packet, so she provided a copy for the Commission's consideration. She noted that native trees were not included in the ordinance and believed native trees should be addressed. She expressed concern for the amount of time a neighbor could address the fact that trees must be cut. She also asked how this would be documented and suggested a guideline in regard to documenting the baseline for views. She further noted that the ordinance did not address the unscrupulous homeowner who cuts down a tree for a view and recommended adding language in that regard.

Daniel Guggenheim, concerned resident, believed there should be an affirmatively stated right to views. He explained that a Eucalyptus tree continues to interfere with his view and he has no discretion in that regard. He felt he should have some mechanism to address his concerns with his neighbors and hoped this ordinance has continued discussion. He further felt this ordinance would be helpful to his situation.

Bruce Corcoran, concerned resident, recommended that the Commission discontinue work on the draft ordinance because in his view, it is not beneficial to the community. He stated that probably 50% of the residents in Strawberry would not need this ordinance because they could resolve issues amongst themselves. He also pointed out that staff must survey the residents, otherwise this entire exercise is a waste because the majority of the community must be in favor of this ordinance before moving forward.

Marie Moeller, concerned resident, representing Bay View Heights, favored the ordinance in order to avoid lawsuits. She hoped that the residents would be able to keep the peace. She noted that attached to the December 8<sup>th</sup> meeting was a survey that she conducted with the majority of the residents in favor of an ordinance. She felt it is important that those that live in the area have a voice and indicated that a survey is extremely important to this process.

Sydney Bloch, concerned resident, stated that over the years there had been problems with landscaping, sunlight and view and felt an ordinance should be available as a guideline in order to resolve issues in the community.

Diane Cummings, concerned resident, recommended a survey due to the concerns in the neighborhood. She also noted that when she purchased her home there was a partial view of the City, which she desired to maintain. She added that this ordinance would benefit the neighborhood along with the CC&Rs.

John Leonard, concerned resident, disagreed with the ordinance and recommended discontinuing work on the draft ordinance.

Derek Hudson, concerned resident, discussed CC&Rs and believed the proposed ordinance would be a very valuable backup to the CC&Rs. He also commented on privacy and did not believe that individuals have the right to privacy when individuals purchase a lot with no privacy. He further stated that the views must be maintained since the date of purchase. He then read language into the record that is included in the CC&Rs under Section "B-9" for the Commission's consideration which provided view protection.

Commissioner Holland asked for clarification on the views that would be protected, the views on the date of purchase of the property or the views on the date of effectiveness of the ordinance. Mr. Berto responded that the effective date of establishing rights to views would be the date the ordinance takes effect.

Greg Wolff, concerned resident, favored the ordinance and urged the Commission to move forward because there is a great need for the ordinance within the community. He also agreed to a Strawberry survey. He further preferred the ordinance before revisions were made.

Jeanne Sparks, concerned resident, favored the ordinance as a backup to the CC&Rs.

Sue Zimmerman, concerned resident, believed this ordinance would enforce "*reasonable code of behavior*" and noted her support for the ordinance. She added that the real dilemma is the fact that property values are declining due to the loss of views.

Commissioner Buddie left the meeting.

Mr. Butler noted a few conflicts with the CC&Rs and stated that they did not desire to conflict with the CC&Rs. He stated that his understanding of Mr. Hudson's comments provided for the entire Strawberry peninsula after inception and believed there is a question as to whether the other developed CC&Rs are valid. He added that the majority of Strawberry has no CC&Rs and this ordinance would help those residents.

Chairman Berland asked whether the first set of CC&Rs was still valid. Staff responded that the historic CC&Rs referred to at a previous hearing were established as a template or model, but they had to be recorded on a subdivision-by-subdivision basis in order to take effect. He explained that the result of the investigation and research is attached in the staff report. He further stated that according to records maintained by the County, there is a small percentage of lots affected by CC&Rs that pertains to views and privacy.

Mr. Butler stated that when they started this process they knew about the view protection ordinance in Tiburon and approached County staff to investigate whether it was worthwhile to pursue. He believed the community did a great job presenting the facts and in terms of community support there is a real outcry from the community to have a dispute resolution process in place. He noted that there were a number of meetings with the community along with newspaper articles that addressed the draft ordinance. He added that some Strawberry residents have a right to view and privacy while others do not and he felt this ordinance would provide some equality for the Strawberry peninsula. He discussed the effective date of the ordinance, which several residents noted their concerns and explained that they would be happy to conduct a survey, which in his view would be a great next step.

The hearing was closed to the public.

Commissioner Dickenson stated that the County should not venture into this. After hearing the testimony today, he would recommend discontinuing work on the draft ordinance. He then suggested that if the Commission were seriously considering this ordinance that an independent survey be conducted. He cited the difference of opinions, lack of consensus, and limited staff resources.

Commissioner Julin concurred with Commissioner Dickenson's comments. She respected and appreciated the efforts made by the community to develop this ordinance, but expressed concern with the fact that the County would have no legal authority to administer the ordinance.

Chairman Berland opposed a survey because even if the majority of the community desired an ordinance there is such a potential for serious unintended consequences throughout the county from this ordinance. He added that it favors those that enjoy views of the Bay and provides no right for those who desire privacy. He further agreed with discontinuing work on this draft ordinance. If a majority of the community found it necessary to provide provisions concerning views and privacy, that could be achieved by amending those CC&Rs.

Commissioner Holland noted that he was quite impressed with the ordinance established by staff and noted his support for the ordinance. He believed views should be protected.

Commissioner Barner stated that if a survey were conducted, he would be very concerned about how it was worded and whether the respondents were educated. He felt education is needed before an individual could respond to a survey. He discussed Page 7 of the draft ordinance and pointed out that there is no authority by this chapter. He explained that Marin County has a number of active groups and, as indicated in the staff report, this is a problem especially unique to Strawberry and recommended that the Special Services District provide guidance for dispute resolution. He further agreed work on the draft ordinance should be discontinued.

Commissioner Thompson expressed concern for what happens next. Mr. Hinds responded that this would be forwarded to the Board of Supervisors in the form of an informational report and if the Commission desired additional comments in a letter that could be attached.

M/s, Barner/Julin, to recommend that the BOS direct staff to discontinue any further work on the draft ordinance relating to private rights pertaining to trees. Motion passed 5/1 (Commissioner Holland opposed and Commissioner Buddie absent).

Commissioner Thompson suggested adding that in case there is an objection to this position by the Board of Supervisors, that it be referred back to the Planning Commission. Mr. Hinds responded that if the Board agreed upon an item that was not included, the Board would refer it back to the Planning Commission.

6. DIRECTOR'S ORAL REPORT

a. Status report on Countywide Plan Update

Mr. Hinds noted the draft Countywide Plan provided to the Commission.

Commissioner Barner desired a master schedule from staff in order to better understand the process. Mr. Hinds responded that tonight is a public workshop and all Commissioners are invited to attend. Staff also added that there would be three Planning Commission workshops to discuss the three elements of the Plan and then ten hearings as indicated in the flyer. After those ten hearings, staff hopes in May they would have a number of recommendations for staff to conduct a draft EIR and a legal analysis.

b. Report on On-Going/Pending Development Projects

Staff announced that Tomales Bay Association filed a lawsuit on the Warren Weber Coastal Permit and Tidelands Permit, and briefly summarized the basis of the suit. Staff also reported on a few other projects for the Commission's consideration.

7. APPROVAL OF MINUTES – FEBRUARY 9, 2004

The Commission noted a few corrections to the February 9, 2004 Minutes to be revised by staff.

M/s, Thompson/Julin, and passed unanimously of those present, to approve the Minutes of February 9, 2004 as amended. Motion passed 6/0 (Commissioner Buddie not present).

8. UPDATE ON BOARD OF SUPERVISORS ACTIONS

February 24, 2004: Ghazi Variance Appeal (Kentfield)

March 2, 2004: Sorocko Consultant Agreement - Preparation of an Environmental Assessment (Tiburon)

March 16, 2004: EIR Contract for San Pedro Road project (San Rafael)  
Pappas Design Review Appeal (Sleepy Hollow)

March 23, 2004: Energy Workshop

9. FUTURE AGENDA DISCUSSION ITEMS, FIELD TRIPS

March 8, 2004: Methodology Discussion; Countywide Plan Workshop

March 9, 2004: Countywide Plan Workshop

March 10, 2004: Countywide Plan Workshop

March 22, 2004: Plimitch Variance Appeal (Greenbrae)