



MARIN COUNTY

COMMUNITY DEVELOPMENT AGENCY

ALEX HINDS, DIRECTOR

CORRECTED

STAFF REPORT TO THE PLANNING COMMISSION

TWEED APPEAL OF THE COMMUNITY DEVELOPMENT AGENCY'S CONDITIONAL APPROVAL OF THE TWEED DESIGN REVIEW

Item No:	6.	Application No:	DM 04-26
Applicants:	Leila and Kevin Tweed	Appellants:	Leila and Kevin Tweed
Property Address:	170 Del Oro Lagoon, Novato	Assessor's Parcel:	157-550-10
Hearing Date:	May 3, 2004	Planner:	Megan Basinger

RECOMMENDATION:	Deny the Tweed Appeal and Sustain the Community Development Agency's Conditional Approval of the Tweed Design Review
APPEAL PERIOD:	Ten calendar days to the Marin County Board of Supervisors
LAST DATE FOR ACTION:	May 3, 2004

SUMMARY RECOMMENDATION:

Staff recommends that the Planning Commission deny the Tweed appeal and sustain the Community Development Agency's (CDA) conditional approval of the Tweed Design Review allowing the construction of a retaining wall and fencing within the boundaries of the applicant/appellant's property. A portion of the retaining wall and fence were disapproved because these improvements are located on an adjoining property over land that is subject to a private easement and covenants, codes, and restrictions (CC&R's).

PROJECT DESCRIPTION:

The applicant is requesting Design Review approval to legalize an approximately 3 foot high (34-inch high), 55-foot long concrete retaining wall that has been constructed along the shoreline of the subject property and into a dedicated side yard easement located on the neighboring property to the east, further identified as 176 Del Oro Lagoon (Assessor's Parcel 157-550-11), that benefits the subject property. The retaining wall extends into the lagoon that borders the rear yards of lots in this area of the Bel Marin Keys subdivision. The apparent purpose of the retaining wall is to extend the level portion of the appellant's rear yard. Also included in the proposal is the construction of the following: (1) a 4-foot high plexiglass fence on top of the aforementioned shoreline retaining wall, for a combined height of 7 feet; (2) a 6-foot high fence extending from the garage of the applicant's residence for a length of 18 feet, to the easement boundary and running to the corner of the residence located on the neighboring property at 176 Del Oro Lagoon; and (3) a 4 foot high fence running from the corner of the retaining wall for a length of 50 feet along the eastern boundary of the aforementioned easement on the neighboring property.

SUMMARY OF THE TWEED APPEAL

On February 24, 2004, the CDA granted a conditional approval of the Tweed Design Review permitting the as-built retaining wall that is located within the legal boundaries of the subject property and requiring the applicant to remove the portion of the wall that encroaches into the easement area on the neighboring property to the east, 176 Del Oro Lagoon. The CDA also approved a fence ranging in height from 4 to 6 feet that is located within the legal boundaries of the property. On February 27, 2004, Leila and Kevin Tweed, filed a timely appeal of the CDA's conditional approval of the Tweed Design Review asserting that the CDA did not properly recognize their property rights and their full legal authority to exercise dominion and control over their property pursuant to the easement located on and benefiting their property. In other words, the appellant's assert that they have the legal right to construct the retaining wall and fence within the easement on the neighboring property, and that the condition of the Design Review approval improperly prevented the appellant's from exercising those rights.

GENERAL INFORMATION:

Countywide Plan:	SF4 (Single-family Residential, one to two units per acre maximum density)
Zoning:	BFC-RSP-1.0 (Bay Front Conservation, Residential, Single family Planned District, one unit per acre maximum density)
Lot size:	9,360 square feet (per Assessor's records)
Adjacent Land Uses:	Single-family residential
Vegetation:	Introduced landscaping consisting of trees and shrubs
Topography and Slope:	Relatively flat
Environmental Hazards:	None identified

ENVIRONMENTAL REVIEW:

The Environmental Coordinator has determined that this project is Categorical Exempt from the requirements of the California Environmental Quality Act pursuant to Section 15303, Class 3 of the CEQA Guidelines because it entails construction of a retaining wall and fence on a residentially developed property with no potentially significant impacts on the environment.

PUBLIC NOTICE:

The Community Development Agency has provided public notice of the appeal hearing identifying the applicants, appellants, describing the project and its location, and giving the earliest possible decision date in accord with California Government Code requirements. This notice has been mailed to all property owners within 300 feet of the subject property.

PLAN CONSISTENCY:

The proposed project is generally consistent with the goals and policies of the Marin Countywide Plan. Please refer to the plan consistency findings contained in the attached resolution.

PROJECT ANALYSIS:

Background

The subject property is located in the Bel Marin Keys subdivision and is one of ten lots that have side yard easements for landscaping located on the adjacent property. The subject property's side yard easement is located on 176 Del Oro Lagoon (Assessor's Parcel 157-550-11). Review of the easement language by staff and County Counsel indicates that it is intended for landscaping and decking and does not allow the construction of

any type of equipment or recreational facilities. The easement declaration also states that any dispute that arises from the easement shall be arbitrated by the Bel Marin Keys Community Services District or in accordance with the American Arbitration Association. The County does not enforce Covenants, Codes, and Restrictions (CC&R's) because they are private agreements between property owners that have not been adopted as part of the County's land use regulations. Both the Bel Marin Keys CSD and the owner of 176 Del Oro Lagoon (Assessor's Parcel 157-550-11) have identified their concerns with the retaining wall, mainly because it was constructed across the property line. Both parties have also expressed similar concerns about the proposed fence.

ANALYSIS OF APPEAL:

Leila and Kevin Tweed submitted a Petition of Appeal on February 27, 2004 identifying as the sole basis of appeal that the CDA did not properly recognize their property rights and their full legal authority to exercise dominion and control over their property.

Response to Appeal: The administrative approval issued by the Community Development Agency is within the legal purview of the County to grant permits for the construction of improvements within the legal boundaries of the property in question. The appellants have the benefit of an easement located on the neighboring property, 176 Del Oro Lagoon. The easement in question is subject to the CC&R's of the Bel Marin Keys Subdivision, constituting a private agreement, of which the County does not have purview. The easement language states that in the event of a dispute, the matter shall be arbitrated by the Bel Marin Keys Community Services District or if it refuses, in accordance with the American Arbitration Association, neither of which have occurred to date. Therefore, the CDA's administrative decision stopped short of approving the project in its entirety. However, Design Review findings can be made affirmatively for the retaining wall and fence located within the appellant's property. The fence and retaining wall are similar to other yard improvements in the neighborhood. Should the current dispute over use of the easement in question be resolved amongst all the parties involved, these findings may also be applied to the proposed portion of the fence and wall that extend beyond the appellant's property and are located within the easement boundaries.

CONCLUSION:

In conclusion, staff finds that the County does not have the authority to grant approvals on parcels without the owner's consent and approval and the County does not enforce private agreements. Approval of that portion of the fence and retaining wall within the legal boundaries of the property to construct would be consistent with other improvements in the subdivision. The off-site portion of the fence and retaining wall are not to be approved when there is a dispute over the owner's legal authority to constructing in the side yard easement.

RECOMMENDATION:

Staff recommends that the Planning Commission review the administrative record, conduct a public hearing, and move to adopt the attached resolution: (1) denying the Tweed Appeal; and (2) sustaining the Community Development Agency's conditional approval of the Tweed Design Review.

- Attachments:
1. Proposed Resolution Denying the Tweed Appeal and Sustaining the Community Development Agency's conditional approval of the Tweed Design Review
 2. Tweed Petition for Appeal, received 2/27/04
 3. Tweed Design Review Notice of Decision
 4. Declaration of Side Yard Easements
 5. Location Map
 6. Assessor's Parcel Map
 7. Site Plan

8. Department of Public Works, 12/15/04
9. Bel Marin Keys Community Services District letter, 1/21/2004
10. Bel Marin Keys Community Services District letter to applicant, 10/30/03
11. Letter from Kevin and Leila Tweed (with photos), 1/7/04
12. Letter from Reggie and Andrea Henkart, 1/20/2004
13. Letter from Kevin and Leila Tweed (with attachment), 1/26/04
14. Letter from Steve Fraser, 2/18/04
15. Letter from Sue Lattanzio, 2/20/04
16. Letter from Madeline and Joseph Thomas, 4/8/2004
17. Letter from Robert Forsyth, 4/10/2004
18. Letter, 4/1/2004

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. _____

A RESOLUTION DENYING THE TWEED APPEAL AND SUSTAINING THE
COMMUNITY DEVELOPMENT AGENCY'S APPROVAL OF THE TWEED DESIGN REVIEW
170 DEL ORO LAGOON, NOVATO
ASSESSOR'S PARCEL 157-550-10

SECTION I: FINDINGS

- I. WHEREAS Leila and Kevin Tweed are requesting Design Review approval to legalize an approximately 3 foot high (34-inch high), 55-foot long concrete retaining wall that has been constructed along the shoreline of the subject property and into a dedicated side yard easement located on the neighboring property to east, further identified as 176 Del Oro Lagoon (Assessor's Parcel 157-550-11), that benefits the subject property. The retaining wall extends into the lagoon that borders the rear yards of lots in this area of the Bel Marin Keys subdivision. The apparent purpose of the retaining wall is to extend the level portion of the appellant's rear yard. Also included in the proposal is the construction of the following: (1) a 4-foot high plexiglass fence on top of the aforementioned shoreline retaining wall, for a combined height of 7 feet; (2) a 6-foot high fence extending from the garage of the applicant's residence for a length of 18 feet, to the easement boundary and running to the corner of the residence located on the neighboring property at 176 Del Oro Lagoon; and (3) a 4 foot high fence running from the corner of the retaining wall for a length of 50 feet along the eastern boundary of the aforementioned easement on the neighboring property. The subject property is located at 170 Del Oro Lagoon, Novato and is further identified as Assessor's Parcel 157-550-10.
- II. WHEREAS on February 22, 2004, the Community Development Agency issued a conditional approval of the Tweed Design Review granting approval of the as-built retaining wall that was located within the legal boundaries of the subject property and requiring the applicant to remove the portion of wall that encroaches onto the neighboring property. The CDA also approved fencing ranging in height from 4 to 6 feet that is located on or within the legal boundaries of the property
- III. WHEREAS, a timely appeal of the Community Development Agency's approval of the Tweed Design Review has been filed by Leila and Kevin Tweed asserting that the decision is based upon a misunderstanding of property rights and the appellants have full legal authority to exercise dominion and control over their property.
- IV. WHEREAS the Marin County Planning Commission held a duly noticed public hearing on May 3, 2004, to consider the merits of the project and appeal, and hear testimony in favor of, and in opposition to, the project.
- V. WHEREAS the Marin County Planning Commission finds that this project is Categorically Exempt from the requirements of the California Environmental Quality Act pursuant to Section 15303, Class 3 of the CEQA Guidelines because it entails construction of a retaining wall and fencing on a residentially developed property with no potentially significant impacts on the environment.
- VI. WHEREAS the Marin County Planning Commission finds that the proposed project is consistent with the Marin Countywide Plan for the following reasons:
 - A. The project would be consistent with the SF5 (Single-family Residential, two to four units per acre) land use designation;

- B. The project would comply with Marin County standards for flood control, geotechnical engineering, and seismic safety, and include improvements to protect lives and property from hazard;
- C. The project would comply with governing development standards related to roadway construction, parking, grading, drainage, flood control and utility improvements as verified by the Department of Public Works;
- D. The project would not cause significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation, or other services; and
- E. The project would minimize soil disturbance and maximize retention of natural vegetation.

VII. WHEREAS the Marin County Planning Commission finds that mandatory findings to approve a Design Review (Section 22.42.060 of the Marin County Code), can be made for the portion of the proposal located within the legal boundaries of the property, but cannot support the portions that extend over the property lines given the dispute over the ability of the applicant/appellant's right to use the easement to the extent that is desired. Should a resolution be reached over the use of the easement, findings could be made to support the project in its entirety.

- A. The proposed development 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 development of the neighborhood as a whole, including public lands and rights-of-way;**

The retaining wall and the portion of the proposed fence within the property will not interfere with development in the vicinity because these improvements are compatible with improvements that are located on nearby properties and would be located entirely within the legal boundaries of the subject property, consistent with the County's authority.

- B. The proposed development will not directly, or cumulatively, impair, inhibit, or limit further investment or improvements in the vicinity, on the same or other properties, including public lands and rights-of-way;**

The retaining wall and the portion of the proposed fence within the property will not impair development on neighboring properties. The proposal has been modified so that it does not limit development on neighboring lands.

- C. The proposed development will be properly and adequately landscaped with maximum retention or trees and other natural features and will conserve non-renewable energy and natural resources;**

The proposal to construct new fencing and a retaining wall does not involve the removal of trees or the incorporation of renewable energy features.

- D. The proposed development will comply with applicable design and locational characteristics listed in Chapter 22.16 (Planned District Development Standards);**

The proposal to construct a retaining wall and new fencing would place development in a manner that is consistent with existing improvements in the area and would involve the use of materials that are compatible with those in the vicinity.

- E. The proposed development 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 characteristics of the following:**

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

The retaining wall and the portion of the proposed fence within the property will not result in adverse physical or visual effects on the subject property or on properties within the vicinity.

2. Drainage systems and appurtenant structures;

The retaining wall design will not result in adverse drainage impacts. The Department of Public Works has examined the wall and did not have comments on its impact on the existing drainage pattern.

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

The construction of the retaining wall did not involve significant alteration of the existing terrain. As a result of the wall's construction, the area between the retaining wall and the existing lawn area will be backfilled.

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

The improvements are located within the legal boundaries of the property and do not interfere with movement or circulation of persons, animals, or vehicles.

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

The retaining wall and fencing plan will not result in the elimination of sunlight, views, or privacy to adjacent properties.

F. The project design includes features which foster energy and natural resource conservation while maintaining the character of the community.

The proposal does not include components that would necessitate the fostering of natural resource conservation.

G. 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.

The construction of a retaining wall and the portion of the proposed fence within the property is consistent with the policies of the Countywide Plan and the governing zoning district. The proposal is compatible with existing improvements in the area and places all development within the legal boundaries of the property.

VIII. WHEREAS the Marin County Planning Commission finds that the bases for the Tweed appeal cannot be sustained and that the Community Development Agency acted appropriately in issuing the Tweed Design Review due to the following factors:

The CDA did not properly recognize their property rights and their full legal authority to exercise dominion and control over their property..

Response to Appeal: The administrative approval issued by the Community Development Agency is within the legal purview of the County to grant permits for the construction of improvements within the legal boundaries of the property in question. The appellants have the benefit of an easement located on the neighboring property, 176 Del Oro Lagoon. The easement in question is subject to the CC&R's of the Bel Marin Keys Subdivision, constituting a private agreement, of which the County does not have purview. The easement language states that in the event of a dispute, the matter shall be arbitrated by the Bel Marin Keys Community Services District or if it refuses, in accordance with the American Arbitration Association, neither of which have occurred to date. Therefore, the CDA's administrative decision stopped short of approving the project in its entirety. However, Design Review findings can be made affirmatively for the retaining wall and fence located within the appellant's property. The fence and retaining wall are similar to other yard improvements in the neighborhood. Should the current dispute over use of the easement in question be resolved amongst all the parties involved, these findings may also be applied to the proposed portion of the fence and wall that extend beyond the appellant's property and are located within the easement boundaries.

SECTION II: PROJECT APPROVAL

NOW, THEREFORE, BE IT RESOLVED that the Marin County Planning Commission hereby denies the Tweed appeal and sustains the Community Development Agency's conditional approval of the Tweed Design Review subject to the following conditions:

Marin County Community Development Agency, Planning Division

1. Pursuant to Marin County Code Chapter 22.42, the Tweed Design Review is approved to legalize a 34-inch high, 50-foot long concrete retaining wall that has been constructed along the shoreline of the subject property. A 6-foot high fence extending from the garage of the residence for a length of 18 feet, and then extending from that point to the side property line and running the length of the property line to the 104 foot mark, where it will then drop to a height of 4 feet is approved. The 4 foot high fencing is approved to meet the 4-foot high plexiglass fencing that is approved to be located atop the retaining wall. This approval does not include any improvements that are located outside of the legal boundaries of the property. The subject property is located at 170 Del Oro Lagoon, Novato and is further identified as Assessor's Parcel 157-550-10.
2. Except as modified herein, plans submitted for a building permit shall substantially conform to plans on file in the Community Development Agency-Planning Division and identified as "Exhibit A," entitled "Site Plan – Tweed Property" consisting one sheet, prepared by Bob Walling Technical Services, dated October 28, 2003.
3. Exterior building colors and materials shall be in substantial conformance with the following colors and materials: (1) concrete retaining wall; (2) plexiglass fencing material; and (3) solid wood fence boards topped with a lattice panel, as shown on "Exhibit A." All flashing, metal work, and trim shall be painted or coated with an appropriately subdued, nonreflective color. Deviations from the approved colors and materials shall be submitted for review and approval by the Community Development Director.
4. WITHIN 30 DAYS OF THIS APPROVAL, the applicant shall fulfill the following requirements:
 - a. Submit a revised plan to the Community Development Director that shows the maximum length of the wall as 50 linear feet and its location entirely within the boundaries of the subject property.
 - b. Submit a revised plan to the Community Development Director that shows all proposed improvements within the boundaries of the subject property.
 - c. Apply for a building permit for the approved fence located atop the retaining wall and entirely within the property.

5. WITHIN 90 DAYS OF THIS APPROVAL, the applicant shall receive a final inspection from the Building and Safety Division for the fencing that was constructed with the benefit of a Building Permit.
6. WITHIN 150 DAYS OF THIS APPROVAL, the applicant shall remove the portion of the retaining wall that extends beyond the property line and receive an inspection from the Code Enforcement Division confirming this condition. A survey may be required should site features limit the ability of staff to confirm compliance with this requirement. Alternatively, should the dispute over the use of the site yard easement on the adjacent property be resolved in favor of the applicant, the applicant may submit an application for Design Review seeking approval of any existing or proposed improvements within the easement. The Community Development Director may grant extensions of time for compliance with this requirement for due cause.
7. Construction activity is only permitted between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday, and 9:00 a.m. and 4:00 p.m. on Saturday. No construction activity shall be permitted Sunday or Holidays. At the applicant's request, the Director may administratively authorize minor modifications to these hours of construction.
8. During construction, the applicant shall take all appropriate measures, including watering of disturbed areas and covering the beds of trucks hauling fill to or spoils from the site, to prevent dust from grading and fill activity from depositing on surrounding properties.
9. It shall be the responsibility of the applicant to store all construction materials and equipment at the site (or secured at an approved off-site location) in such a manner as to permit safe passage for vehicular traffic at all times. Every effort shall be made by the holder of the building permit to strictly limit the number of vehicles used to transport workers and materials to the site to the minimum number necessary.
10. Any changes or additions to the project shall be submitted to the Community Development Agency for review and approval before the contemplated modifications may be initiated.

Department of Public Works – Land Use and Water Resources

11. The site plan shall show and label the side yard setback.

SECTION III: VESTING OF RIGHTS

The applicant must vest this Design Review by complying with the conditions of approval by October 3, 2004, or all rights granted in this approval shall lapse unless the applicant applies for an extension at least 30 days before the expiration date above and the Community Development Director approves it.

SECTION IV: APPEAL RIGHTS

NOW, THEREFORE BE IT FURTHER 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 **May 13, 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 3rd day of May, 2004, by the following vote to wit:

AYES:

NOES:

ABSENT:

ALLAN BERLAND, CHAIR
MARIN COUNTY PLANNING COMMISSION

Attest:

Alexandra Morales
Recording Secretary