

MARIN COUNTY PLANNING COMMISSION HEARING MINUTES

August 23, 2004

Marin County Civic Center, Room #328 - San Rafael, California

Commissioners Present: Allan Berland, Chairman
Steve Thompson, Vice Chairman
Hank Barner
Don Dickenson
Randy Greenberg
Wade Holland

Commissioners Absent: Jo Julin

Staff Present: Alex Hinds, Director, Community Development Agency
Brian Crawford, Deputy Director, Planning Services
Thomas Lai, Principal Planner
Eric Steger, Public Works Department
David Zaltsman, County Counsel
Johanna Patri, Senior Planner
Jeremy Tejirian, Planner
Jessica Woods, Recording Secretary

Minutes Approved on: **September 13, 2004**

Convened at 1:00 p.m.
Adjourned at 8:00 p.m.

1. ROUTINE TRANSACTIONS

- a. Incorporate Staff Reports into Minutes

M/s, Holland/Barner, and passed unanimously of those present, to incorporate the staff reports into the Minutes. Motion passed 5/0 (Commissioner Julin and Commissioner Thompson absent).

- b. Continuances - None

- c. Approval of Minutes – July 12, 2004 and July 19, 2004

M/s, Berland/Thompson, to continue the July 12 and July 19, 2004 Minutes to the August 30th, 2004 Planning Commission meeting. Motion passed 6/0 (Commissioner Julin absent).

COMMUNICATIONS

The Commission acknowledged several pieces of correspondence for their review.

Commissioner Thompson joined the Planning Commission meeting at 1:03 p.m.

Chairman Berland requested that staff schedule a meeting with the Commission in order to discuss procedures and protocols for Planning Commission hearings. The Commission and staff agreed.

Brian Crawford, Deputy Director, believed it would be helpful to have an agenda with discussion items as follows:

- Information- Coordinating staff reports and minutes.
- Hearing protocol and procedures.
- Length of time for members of the public to speak.

The Commission and staff agreed to meet at 11:30 a.m. on Monday, August 30th, 2004 in the staff meeting room for a Planning Commission workshop with lunch being served.

2. DIRECTOR'S ORAL REPORT

- a. Update on Board of Supervisors Actions - *Ghazi*

Alex Hinds, Agency Director, reported that staff forwarded to the Board of Supervisors the Planning Commission decision to deny the variance that was requested for the Ghazi project in addition to the Commission's opinion that the house was not properly vested. The Board initially voted to uphold the Commission's denial of the variance in addition to determining that the previously approved permits were not properly vested. At subsequent meetings, new information was provided whereby the County was able to determine that the height of the building was in excess of the approved height. Staff provided a number of recommendations to the Board to remove portions of the building that were not in substantial compliance with the subsequent approval by staff. After hearing requests from the property owner, homeowners' association, and neighbors, the Board agreed to defer the matter to private mediation. While the County was kept apprised of the status of the mediation, the County was not a party to the mediation or related agreements. After the mediation process had concluded, the house was able to remain as built. However, there were a number of added modifications to the project such as additional landscaping, noise attenuation measures, view easements provided between parties and some financial remuneration among the parties. At that point, due to the fact that the Board directed that the project be forwarded to mediation, staff brought back recommendations that reflected the results from the mediation and the Board approved the project with the project modifications. Staff explained that there have been many changes to staff's procedures that have been a direct result from this process, from improved coordination and new inspection procedures between planners and building staff, to increased penalties, and new Residential Design Guidelines.

David Zaltsman, County Counsel, explained that the ultimate decision was to redefine the front yard setback. As part of approving a new design review application for the as-built home, the Board, at the request of the other parties to the mediation, decided the portion of the yard previously determined to be the front yard was, in fact, a side yard setback.

Commissioner Barner expressed concern for the public and did not understand how mediation could occur without the public being represented. County Counsel Zaltsman responded that the public was provided notice of the proposed new design review approval that provides notice and an opportunity to be heard, which is all the law requires.

Commissioner Greenberg asked staff to provide the Commission with copies of the public notice of houses over 4,000 square feet. Agency Director Hinds responded that staff intends to create a process for distributing advance information regarding pending development projects on the website in order to reach a broader group of individuals.

Chairman Berland recommended developing criteria for referring large homes to a Planning Commission hearing that would be determined by the Planning Director based upon the square-footage of floor area. Agency Director Hinds recommended discussing that matter at the September 13th workshop on the Design Guidelines. The Commission agreed.

In response to comments, County Counsel Zaltsman stated that the Board handled the approval as a new design review application.

Chairman Berland stated that, if the County had required a certification of conformance that is true and correct under penalty of perjury, there might have been some truthfulness in this matter. He urged staff to consider developing a declaration such as on what is required in any legal document presented in a court of law.

Commissioner Dickenson noted that he received a tremendous amount of communication on this application and pointed out that many individuals object to the Board's approval of the Ghazi project.

b. Report on On-Going/Pending Development Projects- Continued

4. OPEN TIME FOR PUBLIC EXPRESSION (LIMITED TO THREE MINUTES PER SPEAKER) - None

5. FUTURE AGENDA DISCUSSION ITEMS, FIELD TRIPS

Update on Planning Commission Actions

August 30, 2004 – Countywide Plan Update (continued hearing)

September 13, 2004 – Draft Single-Family Residential Guidelines Workshop
Millstein Design Review
Gobar Design Review
Antonioli Lot Line Adjustment

September 27, 2004 – Lamar Design Review
Pon Tree Removal Permit
Murray Design Review

October 11, 2004 – Development Code Amendments
Kirkos Minor Design Review/Tidelands Permit
Moran Design Review

October 25, 2004 – Presently Open

The project involves consideration of the David Spurgeon Appeal of the Ralph Pelligra Floating Home Architectural Deviation approval. The Community Development Agency's Architectural Deviation approval authorized the construction of a 152 square-foot roof deck with a 3-foot high open railing and an exterior spiral staircase to the deck below. The railing for the deck and staircase shall reach a maximum height of 18 feet above the waterline and shall have minimum setbacks of at least 10 feet from the adjacent floating homes. The railing shall be at least 75 percent open. The bases provided for the appeal include the height of the railings and the use of the deck. The subject property is located at **52 Liberty Dock, Waldo Point Harbor**, and is further identified as **Assessor's Parcel 901-020-51**.

Jeremy Tejirian, Planner, summarized the staff report and recommended that the Commission deny the Spurgeon Appeal and approve the Pelligra Architectural Deviation based on the findings and subject to the conditions contained in the attached Resolution.

In response to Commissioner Barner's question about intended use, Planner Tejirian responded that the intended use is for sunbathing.

In response to Commissioner Thompson's concern about an entity that could police the conditions, Planner Tejirian responded that this is an area of transition and enforcement is through the County and the Harbor Master in terms of what could be built.

The hearing was opened to the public.

David Spurgeon, appellant, opposed the Pelligra Architectural Deviation. He then provided the Commission with two pages from the Floating Home Ordinance in regard to height for their review. He further believed the deck would act as another story and expressed concern for any future use.

Ralph Pelligra, applicant, explained that the anticipated use of the deck would be used for sunbathing as well as viewing the Bay. He then addressed the issues of privacy and light by providing the Commission with several enlarged photographs depicting the area of the proposed location of the deck for their consideration. He further pointed out that the area is open and would not be used as a living area.

The public hearing was closed.

Commissioner Thompson viewed this as an exception that did have a negative impact on the neighbor, and believed approval would set a precedent.

Commissioner Greenberg stated that the impact of this roof deck is very minor to the neighbor. She desired to add conditions that there be a rail with no solid materials and no permanent structures placed next to it. She further believed the precedent has already been set and noted her support of the roof deck.

Commissioner Dickenson concurred with Commissioner Greenberg's comments. He further noted that he is in favor of denying the appeal and approving the Pelligra Architectural Deviation.

Commissioner Barner agreed with Commission Greenberg's comments. He also believed Item 1 should be revised regarding any type of solid enclosure of the rail.

Chairman Berland stated that, if the appeal is denied, the Commission could add language to the Resolution in order not to set a legal precedent.

Chairman Berland asked for a motion.

M/s, Greenberg/Holland, to deny the Spurgeon Appeal and approve the Pelligra Architectural Deviation with the following modifications: include language that this deck would not create privacy issues or view obstruction; and that no opaque or solid materials or structures be allowed to further obscure light and air in that area.

Commissioner Dickenson believed planters could add benefit in terms of increased setbacks from the railing and visual screening and should be allowed.

Commissioner Holland recommended for safety purposes using the original 3.75-foot limit on the railing height, which was originally proposed by the architect.

Commissioner Greenberg had no objection to the 3.75-foot height limit.

Commissioner Dickenson proposed that the railing not be over the commercial railing height of 3.5 feet. Commissioner Greenberg noted that the language in Item C must be revised in that regard.

Commissioner Greenberg accepted the revisions to the original motion that planter boxes be allowed and that the railing height not exceed the commercial railing height. Commissioner Holland accepted the amendment.

Motion passed 5/1 (Commissioner Thompson opposed and Commissioner Julin absent).

Chairman Berland announced at 3:30 p.m. that the Commission would take a short recess and then reconvene with the next agenda item.

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. 04-013

**A RESOLUTION DENYING THE SPURGEON APPEAL AND APPROVING WITH CONDITIONS
THE PELLIGRA FLOATING HOME ARCHITECTURAL DEVIATION**

**ASSESSOR'S PARCEL NO. 901-020-51
52 LIBERTY DOCK, WALDO POINT HARBOR, SAUSALITO**

SECTION I: FINDINGS

- I. WHEREAS the applicant, Ralph Pelligra, requested Architectural Deviation approval to construct a 152 square-foot roof deck with a 3.75-foot high open railing and an exterior spiral staircase to the deck below. The railing for the deck would reach a maximum height of 18.75 feet above the waterline and would maintain minimum setbacks of at least 10 feet from the adjacent floating homes. The subject property is located at 52 Liberty Dock, Waldo Point Harbor, Sausalito, and is further identified as Assessor's Parcel 901-020-51.
- II. WHEREAS the Marin County Planning Division approved the project with conditions on May 14, 2004. The conditions of approval modified the project to conform with the following project description: the construction of a 152 square-foot roof deck with a 3-foot high open railing and an exterior spiral staircase to the deck below. The railing for the deck and staircase shall reach a maximum height of 18 feet above the waterline and shall have minimum setbacks of at least 10 feet from the adjacent floating homes. The railing shall be at least 75 percent open.
- III. WHEREAS the appellant, David Spurgeon, filed a timely appeal of the Pelligra Architectural Deviation approval on May 23, 2004. The bases provided for the appeal include the height of the railings and the use of the deck.
- IV. WHEREAS the Marin County Planning Commission held a duly noticed public hearing on August 23, 2004, to consider the merits of the project, and hear testimony regarding the project.
- V. WHEREAS the Marin County Planning Commission finds that the proposed project is Categorically Exempt from the requirements of the California Environmental Quality Act, per Section 15301, Class 1 of the CEQA Guidelines because it entails the construction of a roof deck and staircase on an existing floating home with no potentially significant impacts to the environment.
- VI. WHEREAS the Marin County Planning Commission finds that the proposed project would be consistent with the policies of the Marin Countywide Plan and Richardson Bay Special Area Plan listed below because the development would be consistent with the mandatory findings for Architectural Deviation approval.
 - A. Countywide Plan Policy CD-14.5 and Richardson Bay Special Area Plan Policy 1 (Residential Vessels and Floating Structures), which allow floating homes on the Bayfront Conservation Floating Home Marina land use designations, since the subject property would continue to be used as a residential floating home.
 - B. Countywide Plan Policy EQ-3.11 and Richardson Bay Special Area Plan Policy 10, (Public Access, Views, and Vistas) which emphasize the consideration of visual qualities and view potential of the surrounding environment, since the proposed project would not result in the substantial loss of views and would not adversely affect the visual quality of the site.

VII. WHEREAS the Marin County Planning Commission denies the Spurgeon Appeal and finds that the proposed project is consistent with the mandatory findings to approve a Floating Home Architectural Deviation, as established by Section 22.46.040 of Marin County Code, as follows:

A. The deviation is comparable to and compatible with the size of neighboring floating homes.

Floating homes in the area of the subject berth are various sizes, dimensions, and heights. Several floating homes surrounding the subject berth, including the adjacent floating home to the north, exceed the maximum height normally allowed. The size of the existing floating home is consistent with the existing development patterns found in the marina because several other floating homes also exceed the maximum height limits, the floating home is less wide, less long and has greater setbacks than are allowed by the floating home regulations. The proposed roof deck and staircase would not increase the existing floor area of the subject floating home.

B. The deviation results in adequate open space and view sheds both within and to the marina.

Architectural Deviation approval is required because the railing for the roof deck and staircase would exceed the height of 16 feet above waterline normally allowed for floating homes. The roof deck would be limited to a small portion of the roof located at the eastern end of the superstructure. The total area of the deck would not exceed 152 square feet, which would result in 8 linear feet of railing directly facing the neighbor to the south. Further, the design of the railing would be partially open to provide views from the surrounding area. The adjacent floating home to the south enjoys primary view corridors towards the Bay to the east. Further, views toward the sky from the adjacent floating home are not substantially impeded because the portion of the railing facing the neighbor is narrow. However, in order to minimize the height of the structure, a condition of project approval requires that the height of the railing be reduced to 3.5 feet.

C. All features allowed by the deviation will not extend above 20 feet from the water line.

As modified by the conditions of approval, the maximum height of the improvements would not exceed 18.5 feet above the waterline.

D. The deviation will not provide for an additional story of living or storage space.

The proposed roof deck would not be enclosed and, therefore, would not add another story of living or storage space.

E. The deviation is consistent with the intent of Chapters 11.24 and 19.18 of the County Code.

There are special conditions that make the proposed project unique, and, therefore this Architectural Deviation approval would not serve as a precedent for future approvals of roof decks that exceed the height limit. These conditions include the characteristics of the adjacent floating homes, the small size of the roof deck, and the 10-foot setbacks from the adjacent floating homes. Further, the proposed improvements would be required to meet the mooring and construction standards of the Marin County Building and Safety Division, and would, therefore, be properly designed and fully engineered.

SECTION II: CONDITIONS OF PROJECT APPROVAL

NOW, THEREFORE, BE IT RESOLVED that the Marin County Planning Commission hereby denies the Spurgeon Appeal and approves the Pelligra Floating Home Architectural Deviation (FA 04-3) subject to the following conditions:

1. This Architectural Deviation approval authorizes the construction a 152 square-foot roof deck with a 3.5-foot high open railing and an exterior spiral staircase to the deck below. The railing for the deck and staircase

shall reach a maximum height of 18.5 feet above the waterline and shall have minimum setbacks of at least 10 feet from the adjacent floating homes. The railing shall be at least 75 percent open.

2. Except as modified herein, the plans submitted for a Building Permit shall substantially conform to plans identified as "Exhibit A," entitled "Addition to Roof Service" prepared by Paula Caddy, with final revisions dated March 22, 2004, and on file with the Community Development Agency, Planning Division.
3. Planting boxes shall be allowed on the roof deck near the railing. However, large deck furniture, including but not necessarily limited to large grills, are not permitted on the roof deck. Further, opaque surfaces such as boards or canvas material which would reduce sunlight and views, shall not be attached to the roof deck railings.
4. Exterior finishes shall not be reflective, and exterior lighting for the approved development shall be downward directed and hooded.
5. Hours of construction shall be limited to 7:00 a.m. to 5:00 p.m., Monday through Friday, and 9:00 a.m. to 4:00 p.m. on Saturday. No construction shall be permitted on Sundays or holidays. The approved hours of construction must be noted on any subsequent development plans. At the applicant's request, the Director may administratively authorize minor modifications to these hours of construction.

SECTION III: VESTING AND APPEAL RIGHTS

NOW, THEREFORE BE IT RESOLVED that the owner must vest this Floating Home Architectural Deviation approval by no later than August 23, 2006, or all rights granted in this approval shall lapse unless the owner applies for an extension at least 30 days before the expiration date above and it is approved by the Agency Director. An extension to the entitlement may be approved for cause by the Planning Division based upon the submission of an extension application.

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 \$700.00 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 **September 2, 2004.**

SECTION IV: VOTE

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

AYES:

NOES:

ABSENT:

ALLEN BERLAND, CHAIRMAN
MARIN COUNTY PLANNING COMMISSION

Attest:

Jessica Woods
Recording Secretary

7. MASTER PLAN WAIVER, COASTAL PERMIT, DESIGN REVIEW AND USE PERMIT: MICHAEL MORITZ JP

The applicant proposes to construct a new 2,996 square foot single-family residence with approximately 1,230 square feet of porch area and a 979 square foot detached garage and storage structure sited on a woodland knoll upslope and approximately 300 feet south of the existing development on the 84.33-acre subject property. Construction of a new approximately 660-foot long driveway off the existing driveway will provide access to the proposed building site, located approximately 800 feet west of the front (eastern) property line and the existing entrance off Horseshoe Hill Road. As proposed, the residence will have a maximum height of 25 feet above natural grade. The proposed garage, sited 50 feet east of the proposed residence, will have a maximum height of 22.16 feet above natural grade through section and 25 feet at the down slope elevation. The applicant also is proposing to legalize and convert to farm worker housing an existing "as-built" 1,500 square foot single-family residence located off the existing driveway and east of the historic development on the subject property. In addition, the applicant is proposing to convert the existing, 1,200 square foot primary single-family residence to a guest house by removing the kitchen. The applicant is proposing to demolish two existing guest houses: (a) a 400 square foot structure southwest of the farm worker housing unit; and (b) a 420 square foot structure east of the proposed guest house. The proposed new residence will be served by construction of an on-site mound sewage disposal system located down slope from, and east of, the new residential site and two 10,500-gallon water storage tanks north of the new residential site. The existing development will be served by construction of a new on-site sewage disposal system located at the lower portion of the property. All development and the agricultural production will be served by an existing well. The proposal does not include the withdrawal or use of water from Pine Gulch Creek. The property owners propose to continue the existing cattle grazing operation, owned and managed by the ranch manager who also will occupy the farm worker-housing unit. The owners propose to convey to the County an Agricultural Conservation and Production Easement and Declaration of Restrictions over an identified "Agriculture Production Zone" to provide permanent preservation of potential agricultural lands and to restrict and maintain the farm worker housing unit for use by farm workers who are actively engaged in the production of agriculture at a below market rental rate as determined by the County. The property is located at **5675 Horseshoe Hill Road, Bolinas**, and is further identified as **Assessor's Parcel 188-090-13**.

Johanna Patri, Senior Planner, summarized the staff report and recommended that the Commission review the administrative record; conduct a public hearing; and adopt the attached Resolution conditionally approving the Moritz Coastal Permit, Design Review, and Use Permit applications.

In response to Commissioner Dickenson's concern about the removal of the kitchen from the proposed guest house, Planner Patri responded that before final inspection of the new primary residence, the kitchen must be removed.

In response to Commissioner Holland's question about the screened porches of the new residence, Planner Patri responded that they are unconditioned, unheated spaces, that are not subject to energy requirements under Title 24 and cannot be used as bedroom space and are not subject to EHS septic system regulations.

Commissioner Holland believed the two screened porches are part of the home and recommended adding the 354 square feet of screened porch area to the 2,996 square feet of residential area.

Commissioner Holland expressed concern for the terms "*tightly clustered*" and "*loosely clustered*." Planner Patri responded that the terms have been used before.

In response to Commissioner Holland's concern regarding drawing water from Pine Gulch Creek, Planner Patri responded that if there were an approved project, final draft of the easement would indicate that there would be no draw from Pine Gulch Creek.

In response to Commissioner Holland's concern about inclusion of septic drawings, Planner Patri responded that septic system plans generally are submitted directly to Environmental Health Services (EHS) and staff relies on EHS staff for their review.

Commissioner Barner pointed out that the plans show a three bedroom residence, but in the Resolution it discusses four bedrooms. Planner Patri explained that the septic system has been sized for four bedrooms.

In response to Commissioner Barner's concern for the waiver of the Master Plan, Planner Patri responded that there is no possibility under this zoning for any further entitlements in terms of land divisions.

In response to Commissioner Greenberg's concern for information about the agricultural viability on this property, Planner Patri responded that Dr. Jeffrey Creque is an agricultural ecologist consultant and is qualified in his ability to assess properties for their grazing ability.

Commissioner Greenberg discussed the easement language under Item 8a and expressed concern for the word, "*viable*."

Mike Moritz, applicant, provided the Commission with a very quick overview of the project. He added that the entire guest house kitchen would be removed. He also clarified that this is an application for a three-bedroom house. He further pointed out that the pasture land area has increased somewhat over the last three to four years due to clearing of brush and dead trees.

Laura Hartman, the project architect, provided a PowerPoint presentation for the Commission's consideration and briefly discussed the selected site location that included a summary of key issues. She added that this project is dedicated to protecting agriculture, the main residence is located in an oak grove, and not visible. She further believed the proposal keeps agricultural on this land in perpetuity.

Doug Ferguson, attorney representing the applicant, discussed the letter from the Marin Conservation League. He addressed the word, "*viable*" and explained it meant if agriculture could not be conducted that it simply could not be done, but it would be addressed in the language of the final easement. He briefly discussed the letter from EAC regarding purporting conversion of land from agricultural to residential. He also provided suggested language to staff concerning the placement of the fence along Pine Gulch Creek for the Commission's consideration. He then commented on the timing of the issuance of the building permit for the new residence. He pointed out that there is a letter attached in the staff report from the Coastal Commission, which he responded to. He further believed all issues have been addressed.

The hearing was opened to the public.

Roger Roberts, representing the Marin Conservation League, submitted a letter expressing the League's concerns for the Commission's consideration. They felt that adding a residence that is disassociated with the agricultural use of the land would increase the value of the property and make the agricultural use incidental to the residence. They disagreed with staff's recommendation. He then provided information from the Marin Agricultural Land Trust for the Commission's consideration. He expressed concern for language that only allows the County to come in on the first anniversary to monitor this property for agricultural use. In addition, there is no mention in the draft easement of the conditions in the staff report relative to creek and natural area protections, which must be included as well as reference to the Agricultural Management Plan. He then discussed Exhibit C, which is incorporated within the agricultural easement language and expressed concern for processing food and fiber products, which should be reviewed.

Anne Baxter, concerned resident, read a letter dated August 22, 2004 into the record on behalf of Peter Martinelli for the Commission's review.

Catherine Caufield, representing EAC, provided the Commission with EAC's interpretation of information regarding clustering, size, relationship to agriculture, distance to the road, and visual impacts as well as a view shed map for their consideration. She also noted that there has not been provided an opportunity for public review of the final easement. She believed the project must adhere to the County's standards and asked the Commission to consider the entire County of Marin in regard to rules and policies adopted. She also discussed findings for the Commission's consideration. She further asked that the Commission provide Mr. Moritz clear direction to protect the agricultural lands.

Gordon Bennett, representing the Sierra Club, expressed concern for the Moritz application, which in his view is a "square peg trying to fit into a round hole." He believed this residence is not incidental to the agricultural use; not in the same cluster; visibility is an issue; and he viewed this as an attack on agricultural zoning and continued approval of these loop holes will create a mortal wound to agricultural zoning. He further suggested that the Commission deny the Moritz application.

Cela O'Connor, concerned resident, submitted a letter addressing her concerns, comments and suggestions for the Commission's consideration. She then discussed Special Condition 24 on page 15 of the staff report in relation to the Agricultural Management Plan. Within that Plan there is the Agricultural Conservation and Production Easement and Declaration of Restrictions and within that document the terms of the plan, which are incorporated by reference into Appendix F, which is circumventing the public process for this document not to be available in its completed form to members of the public. She suggested that the Commission consider placing a fence between the Moritz property and the BCPUD land in order to facilitate a complete rotation-grazing program. She further encouraged the Commission to include the final easement in the public process.

Florence Vierra, former ranch owner, provided the Commission with some history about the property and supported the Moritz application. She further believed Marin County should be very thankful to have individuals such as the Moritz Family.

Bob Heffelfinger, ranch manager, indicated that he currently leases the property for grazing. He explained that the Moritz Family has improved the agricultural lands considerably and noted his support.

The public hearing was closed.

In response to Commissioner Dickenson's question regarding staff's recommendation about fencing, Planner Patri responded that this is an extremely valuable creek to the watershed and Bolinas Lagoon and is subject to the provisions of the SCA. That is why staff recommended a 100-foot wide buffer zone. Agency Director Hinds believed that while there could be some flexibility; this is an extremely sensitive area.

Commissioner Holland said her could not make the findings. He expressed concern for the nexus of this home and the agricultural land; clustering; the zoning code in regard to C-APZ-60; the Agricultural Advisory Committee's letter; and Section 2 of the Williamson Act contract for the subject property.

Commissioner Dickenson believed the proposal is appropriate for this property and the proposed house is clustered near the existing farm buildings. He felt the proposed home size is not excessive and would not have any effect on any potential agricultural use of the property. He pointed out that there has been a very significant change in this proposal over previous proposals in terms of the distance from the road and the driveway is the minimum length to access the proposed site. He also stated that the home is very well screened. He further believed the applicant did an excellent job addressing the issues and with some minor modifications to the conditions, he would approve the application.

Commissioner Thompson concurred with Commissioner Dickenson's comments. He also expressed support for the character and quality of this building, how it relates to the outside world, and believed some provision should be added that would allow tree replacement within the wooded area in relation to sudden oak death. He felt the

applicant should be able to decide whether or not he desired to become a farmer. He further supported the project as submitted.

Commissioner Greenberg expressed concern for the appropriateness of the project in relation to the zoning, but agreed with the materials and house design. She desires long-term protection of this area for farming. She felt the proper location for the primary residence is where the existing historic residence is located in order to ensure that the agricultural land would be protected. She further stated that this proposal would increase the value of the land for residential use rather than agricultural use and noted that she could not support the application.

Commissioner Barner agreed with Commission Dickenson's comments, and found the siting, size, and screened porches acceptable. He felt that development of a residence at any site would increase the value of the property. The proposed easement is a commitment to the land. He pointed out that there is a language problem in several areas of the staff report that must be addressed in relation to "*directly related*" and "*compatible with,*" which, in his view, would raise concerns. He further noted his support for the project.

Commissioner Holland is very uncomfortable with approving a project subject to the terms of an easement that is not written and he has no idea what it would include. He also stated that the core of this project is the residential development, and residential development is typically subject to being built on land that is zoned residential, not agricultural.

Commissioner Dickenson believed it would be unfortunate if the Commission did not recognize the fact that a significant investment is required on a lot of the Marin agricultural lands, which have been ignored or degraded over the years, and, in order to protect the land, an individual must have a commitment to the property. He added that this is an investment in an agricultural heritage that would otherwise be lost without that investment. Without maintaining the grazing land, it eventually would be overtaken by forest. He further pointed out that the barn is an agricultural landmark and, in order to receive long-term agricultural commitments, they must allow an individual to build a nice house on the property to keep the land in its historic agricultural use.

Chairman Berland acknowledged that the owner has made a substantial investment, resited the residence off the ridge, but the size has not been reduced since he believes the roof porch area should be included. He expressed concern for the viability of agriculture of this project. He stated that preserving agriculture in West Marin is very important and the Commission should not preclude agricultural production in the future. He further added that he cannot make the findings and would deny the project.

Commissioner Barner recommended continuing the item in order to have a full Commission as well as provide time for additional work to be conducted in regard to the Agricultural Management Plan and easement. Chairman Berland pointed out that the easement provides no protection as drafted. However, he did not believe an easement of this type could allow the Commission to make the findings that must be made.

Commissioner Dickenson agreed that there are a number of details that must be addressed before a vote should be taken, so he would not be prepared to vote in favor of the project today. He desired that the wording of the Management Plan and easement be clarified before he could vote in favor of the project.

Commissioner Greenberg did not believe it is appropriate to vote without viewing the final forms of the Management Plan and the easement.

Mr. Moritz stated that every individual has the right and privilege to improve their property. He asked that the Commission not take a vote in order for his team to come back at a later date to convince the Commission.

Agency Director Hinds recommended continuing the matter to October 25th, 2004 in order to clarify the easement and Management Plan and clarify agricultural viability and setbacks from the creeks. Staff also would work with MALT to establish an easement. Commissioner Holland felt a model easement is a major issue that requires a

tremendous amount of work and consideration, so he recommended having a separate easement for this project rather than waiting for a County model easement to be completed. The Commission and staff agreed.

Chairman Berland asked for a motion.

M/s, Dickenson/Thompson, with the consent of the applicant, the Planning Commission continue the public hearing on this matter until the meeting of October 25th to allow staff and the applicant to further refine some of the details of the project in response to the issues raised by the Commission. Motion passed 6/0 (Commissioner Julin absent).

Chairman Berland announced at 5:56 p.m. that the Commission would take a short recess and then reconvene with the next agenda item.

8. REZONING, MASTER PLAN, DESIGN REVIEW, USE PERMIT: SAN RAFAEL ROCK QUARRY
TKL

This is an application from the San Rafael Rock Quarry proposing to legalize six office buildings totaling 14,651 square feet that are used in support of the San Rafael Rock Quarry operations. The application includes the proposed Rezoning of a 4.71-acre portion of the approximately 276-acre property from a RMPC (Residential Multiple Planned Commercial) zoning district to an IP (Planned Industrial) zoning district or an alternative planned zoning district. The one-story office buildings are located at the base of South Hill along the easterly perimeter of the property and adjacent to San Pablo Bay. Parking for the office uses is provided by 59 on-site parking spaces. The property is located at **1000 Point San Pedro Road, San Rafael**, and is further identified as **Assessor's Parcels 184-010-09, -15, -16, -52**.

In conjunction with this item, County Counsel provided an overview of the Planning Commission's role and authority with respect to various aspects of the San Rafael Rock Quarry operation, including, but not limited to, the Surface Mining and Quarry Permit and the Reclamation Plan.

David Zaltsman, Deputy County Counsel, pointed out that the July 15th court order indicated that the Surface Mining and Quarry permit hearing shall be conducted and held directly by the Marin County Board of Supervisors and it is his understanding that it would include any CEQA determination. He added that the Reclamation Plan application is still incomplete and for purposes of completeness, the deadline has been extended until September 30, 2004 in order for staff to receive the additional information. He also explained that the July 15th order set interim operating conditions that would operate until the Board approves the amended permit. He concluded by pointing out that the only matter before the Commission today is the direct issue of the buildings and the potential rezoning of the 4.71-acre portion of this property.

Thomas Lai, Principal Planner, summarized the staff report and noted supplemental correspondence that was received from the applicant and residents concerning the project. He indicated that the applicant has modified the project seeking to withdraw the Rezoning application and to retain only two of the six office buildings. He recommended that the Commission review the administrative record; conduct a public hearing; deny the request to withdraw the Rezoning; and adopt the recommended resolution recommending that the Board of Supervisors deny the proposed Rezoning, Master Plan, Design Review, and Use Permit applications.

In response to Commissioner Dickenson's question about why the applicant applied to rezone the property to an industrial zoning district that does not permit a quarry operation, staff responded that the new Development Code replaced the conventional M1 and M2 zoning districts, where mining is permitted, with a Planned Industrial (IP) zoning district which did not allow for this use. Deputy Director Crawford explained that the Development Code replaced the M1 and M2 industrial zones with an IP zoning designation. However, the M1 and M2 still exist as a zoning designation until the properties currently zoned M1 and M2 are rezoned to the IP. He noted that there would be separate public hearings that would occur in connection with those rezoning actions.

In response to Commissioner Greenberg's concern as to why a Master Plan did not address the entire property, staff responded that the applicant chose not to submit a Master Plan for the entire property, choosing instead to limit the Master Plan application to the 4.71-acre portion of the property that includes the offices. Since Marin County Code requires a Master Plan for all contiguously-owned property, staff could not support a Master Plan that covers only a portion of the property, when one should be submitted for the entire property, including those submerged land parcels that are owned by the quarry.

Due to the delay in the start of the hearing, several members of the public had to leave, so, at the request of San Rafael resident Sandra Metcalf, those in support of staff's recommendation stood up in order for the Commission to understand that most audience members are in support of staff's recommendation.

In response to Commissioner Greenberg's question about the office uses in regard to the primary activity of the 15 employees, staff responded that according to the information that was provided by the Quarry, the smaller of the two office structures would house the information management system and computer data while the larger of the two buildings would house the remaining staff that are responsible for the day-to-day operations of the Quarry.

In response to Commissioner Greenberg's question regarding the septic system, staff responded that the Quarry had proposed a new up-to-code system that would serve all of the offices and that the application has been found acceptable by Environmental Health Services. Staff explained that the original permit was issued for two caretaker residences and he believed it had capacity for nine bedrooms; however, that system does not meet current County Code for the proposed offices.

In response to Commissioner Greenberg's question regarding back taxes, staff responded that it is not relevant to the zoning application that is being considered. However, staff explained that the County Assessor could legally require back payment of taxes for up to four years from the time the office was made aware of the construction. In this case, upon notification of the construction in 2000 the Assessor's Office was able to retroactively collect property taxes for the offices going back to 1997.

In response to Commissioner Greenberg's question in regard to not acting until the Reclamation Plan is in place, staff strongly recommended that the Commission act on this project rather than delay taking action due to the long standing enforcement nature of the office construction and the additional time that is required to amend the Reclamation Plan.

Commissioner Dickenson clarified with staff that there had been no environmental review conducted on the proposal before the Commission. Staff responded in the affirmative and noted that environmental review is not required if a project is denied.

Mr. Giacomini, attorney representing the Quarry, stated that he is very proud to come forward with a revised proposal, which reduced the office buildings from six to two and reduces the number of employees. He believed there is plenty of evidence to show that the office buildings present in 1982 equal their request to retain 5,700 square feet. He also pointed out that included in the staff report is the Declaration of Marvin Larson regarding the buildings on the San Rafael Rock Quarry, and he identified six office buildings in 1982 for the Commission's consideration. He then provided the Commission with an aerial photograph depicting the six office buildings and urged the Commission to have staff review their evidence because their intent is to operate as they did in 1982. He added that the County cannot deny the Quarry reasonable office buildings, especially if they are equal to or less than what was present in 1982. He explained that the Judge desired to monitor whether the Quarry in good faith filed applications that came close to what was present in 1982 as well as did the County reasonably process those applications. He further urged the Commission to review their evidence in order to make a proper determination.

Commissioner Greenberg clarified with Mr. Giacomini that the residential trailer housed workers associated with the mining operation. Mr. Giacomini responded in the affirmative.

Aimi Dutra, representing the Dutra organization, appreciated the Commission visiting the site in order to understand the property and she is hopeful that there is a turning point with respect to how the Quarry operates with its County and community. She noted that the Dutra organization is very committed to removing those buildings and relocating the personnel as indicated in the revised proposal before the Commission. She further desired to start a new way of dealing with the County and community and really working in good faith on a reasonable revised application, which should be seriously considered.

In response to Commissioner Dickenson's concern regarding the relocation timeline of employees and occupying the buildings, Ms. Dutra agreed to review the timeline and believed the two could be separated.

In response to Commissioner Greenberg's question regarding the specific task of the 15 employees, Ms. Dutra responded that there is quality control, safety personnel, sales staff, Quarry Manager, two compliance offices, community relations persons, purchasing, and several other functions that support the Quarry. Ms. Dutra further noted that if so desired by the Commission she could establish a job description for each one of the staff members that they anticipate to remain. Commissioner Greenberg requested a list from Ms. Dutra. Ms. Dutra responded in the affirmative.

In response to Commissioner Greenberg's concern regarding why sales staff and the purchasing agent must be on-site, Ms. Dutra responded that the purchasing agent is on-site to deal with the San Rafael Rock Quarry and sales staff is on-site regarding customer problems and material issues, which are all central to that operation and she believed it is good efficient business to have a centralized location for this team.

Chris Locke, attorney representing the Quarry, noted that the aerial photograph that was referenced is an Exhibit to Mr. Taylor's letter, which also included Mr. Larson's Declaration as an Exhibit and it appears to be a photograph which depicts the configuration of buildings at the site at the time Dutra acquired the site. He pointed out that Mr. Larson's Declaration includes photographs taken of the buildings, which were taken in 1982 and 1983 as shown in Exhibit B that appeared to be more than 1,100 square feet and he felt it is unrealistic to assume that a Quarry operation could function with 1,100 square feet of office space. He then addressed the legal issue regarding the staff report referencing the California Supreme Court's decision on Hansen and indicated that the Supreme Court applied the diminishing asset doctrine in finding that a mining operation represents an exception to the general rule that a non-conforming use may not be expanded or moved to another location on the property. He would suggest that it did apply to necessary and appropriate expansions of administrative office buildings. He believed they have gone beyond the building requirements as suggested in the staff report by going from six to two buildings. He also stated that under the Hansen decision, even if it turns out that the square footage of those buildings is slightly larger than what they are able to show to be the actual number of square feet in use in 1982 that would be acceptable under Hansen because it is a use that is normally incidental and auxiliary to the non-conforming use. He further noted that the proposal involves a legal non-conforming use and requested approval.

In response to Commissioner Barner's question, Mr. Locke responded that the Hansen case, provided the employees remaining on-site are directly involved with Quarry operations, authorizes an increase in building space to accommodate those operations consistent with a legal non-conforming use that existed in 1982.

County Counsel Zaltsman indicated that the burden of proof is on the applicant to show there is sufficient nexus between the people present and the diminishing asset doctrine as it applies directly to the mining operation. He further added that generally property owners are entitled as an administrative matter to receive a determination of the extent of legal non-conformity by working with staff and that the decision could be appealed to the Commission. Any determination rendered by the Commission could be appealed to the Board of Supervisors.

The hearing was opened to the public.

The following concerned residents supported staff's recommendation and urged the Planning Commission to recommend denial of the San Rafael Rock Quarry Rezoning, Master Plan, Design Review, and Use Permit to the Board of Supervisors:

- Lilli Dryer
- Lee Markrack
- Veronique Raskin
- Nick Themely
- Ken Archuleta
- Mark Dougherty – read a letter into the record on behalf of the Peacock Gap Homeowners Association.
- Bill Paisley – read a letter into the record on behalf of the San Pedro Road Coalition
 - (since these were mobile buildings, they all could have been brought on board after 1982)

- Joseph Caramucci

The public hearing was closed.

Commissioner Holland stated that if the buildings were built without the benefit of permits they should all be subject to enforcement action. Commissioner Dickenson noted that, even portable trailers would require an electrical permit, and no evidence was presented as to whether permits were issued for those structures that were noted by staff to exist historically in 1982. Agency Director Hinds noted that staff must confirm what building permits would have been normally required at that time.

Commissioner Holland asked staff if an expert analysis should have taken place to inform the Commission professionally of what the aerial photographs depicted. Principal Planner Lai responded that the topographic map is based on an interpretation of the aerial photographs and are accurate. Staff pointed out that if Mr. Giacomini and staff could agree on the number of trailers or office buildings, square-footage and number of employees that existed in 1982 and those numbers are not exceeded, then a Use Permit would not be required. Also, the historical surveys were submitted by the Quarry as part of their annual review and the earliest information from 1983 showed the Larson residence and the other trailers with the date being March of 1983. Staff concluded that staff took a conservative position in estimating the amount of floor area that could have existed in 1982.

Commissioner Holland noted that Mr. Larson's affidavit is supported by photographs, which were taken in August of 1982 showing two portables that must be more than 1,100 square feet in total.

Commissioner Thompson suggested contacting individuals from NASA located in Mountain View in order to receive an aerial photograph depicting the area in question at the time and date of 1982.

Commissioner Dickenson clarified that staff's calculation is based on the survey map prepared by a surveyor and not just interpreting an aerial photograph. Staff responded in the affirmative.

Chairman Berland asked staff if the original 1972 permit is at all relevant to this discussion. Principal Planner Lai responded that it is not relevant.

Commissioner Thompson believed they should enter into an analysis to determine the reasonable number of employees needed for operations at the Quarry.

Commissioner Dickenson believed the matter must be resolved very soon and desired a very short turnaround. The Commission agreed.

In response to Commissioner Holland's question in regard to relocating the sales individuals, Ms. Dutra responded that it is more of an efficiency issue in keeping the business and the team centralized. Commissioner Holland believed some efficiency must be sacrificed in regard to the number of employees.

Chairman Berland agreed to a short continuance and indicated that the amount of space allocated for the number of employees did not seem appropriate, as other buildings could be used to house employees.

Commissioner Greenberg requested the following information before a decision is made:

- County staff should clarify whether it is possible to have an upper range of office size that could be supported.
- The applicant should provide the following information and clarifications:

- (1) Provide information relative to the total number of Quarry employees (office and mining) currently and in 1982, including any evidence/data supporting the number of office employees in 1982;
- (2) Provide information on the number of trucks and drivers at the Quarry currently and in 1982;
- (3) Update the declaration from Marvin Larson to include when he worked and lived at the Quarry;
- (4) Provide comprehensive job descriptions for the employees who would be located in the offices;
- (5) Reconsider the proposed timeline for removal of the four office buildings with consideration given to shortening it and possibility relocating staff earlier; and
- (6) Provide expert analysis of the historic aerial photographs.

Chairman Berland asked for a motion.

M/s, Berland/Thompson, to continue the matter to the September 27th, 2004 Planning Commission meeting. Motion passed 6/0 (Commissioner Julin absent).

Chairman Berland adjourned the meeting at 8:00 p.m.