

MARIN COUNTY PLANNING COMMISSION HEARING MINUTES
September 27, 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
Jo Julin

Commissioners Absent: None

Staff Present: Alex Hinds, Director, Community Development Agency
Brian Crawford, Deputy Director of Planning Services
Tom Lai, Principal Planner
Curtis Havel, Planner
Megan Basinger, Planner
Eric Steger, Department of Public Works, Senior Engineer
David Zaltsman, Deputy County Counsel
Jessica Woods, Recording Secretary

Minutes Approved on: **October 11, 2004**

Convened at 1:18 p.m.
Adjourned at 6:20 p.m.

1. WORKSHOP: Planning Commission luncheon workshop on meeting procedures and protocol.

The principal issue addressed at the workshop is the manner in which staff presents Planning Commission decisions on appeal before the Board of Supervisors. The recent Board hearing on the Babcock Design Review in Kent Woodlands was referred to as an introduction to this discussion. Salient points from the discussion included the following:

- In general, Commissioners expressed concerns that staff should have a stronger advocacy role in representing the Planning Commission before the Board of Supervisors.
- It appears that the staff report and other materials before the Board may not represent the full thinking of the Planning Commission insofar as their decision is concerned.
- Resolutions should be carefully crafted and reviewed to ensure that the findings accurately and completely reflect the Planning Commission's decisions.
- Planning Commission minutes should be adopted prior to the Board hearing so that Board members have the benefit of reviewing them prior to considering the Commission's decision.
- The Planning Commission should be very explicit in making their motions.
- Applicants, or their representatives, may make incorrect or misleading statements to the Board that do not fairly characterize the Planning Commission decision.
- Paraphrasing policies and zoning provisions in staff reports may not accurately describe regulations that are important to the decision.
- Having a Planning Commissioner represent the Commission at Board hearings for Commission actions was not favored by a majority of the Commissioners.

Staff explained that they may find themselves in a delicate situation when representing a Planning Commission decision before the Board of Supervisors in the sense that the Board member for the district in which the project is located may have an interest in making a decision that differs from the Planning Commission. In these types of situations, staff has to both fairly represent the Planning Commission decision while also providing options to the Board so they have the flexibility to consider other solutions to issues raised in appeals. Staff did indicate, however, that providing the Board with a complete and accurate description of the Commission's actions was appropriate, as is correcting misstatements made in public hearing testimony before the Board that might mischaracterize the basis for the Commission's decisions. Staff also indicated that text of key policies or zoning provisions would be inserted into staff reports to avoid misinterpretation by the reader.

The Planning Commission and staff also briefly discussed ways in which the Planning Commission hearings could be conducted more efficiently. The Commissioners discussed the idea of limiting their questions at the beginning of the hearings (i.e., following staff report presentation) to factual matters. Allowing public testimony beyond the 3-minute limit was also discussed, and some of the Commissioners agreed that extra testimony can be acceptable if it makes a substantive contribution to the decision making process.

2. ROUTINE TRANSACTIONS

- a. Incorporate Staff Reports into Minutes

M/s, Holland/Julin, and passed unanimously, to incorporate the staff reports into the Minutes. Motion passed 7/0.

- b. Continuances – Item 7-Murray Design Review

M/s, Dickenson/Greenberg, and passed unanimously, to continue Murray Design Review to a date uncertain. Motion passed 7/0.

- c. Approval of Minutes - August 30, 2004 and September 13, 2004.

M/s, Holland/Greenberg, and passed unanimously, to approve the Minutes of August 30, 2004 as amended. Motion passed 7/0.

M/s, Barner/Greenberg, and passed unanimously, to approve the Minutes of September 13, 2004 as amended. Motion passed 7/0.

3. COMMUNICATIONS

The Commission acknowledged several pieces of correspondence for their review.

Commissioner Holland provided the Commission with a newsletter called "*The Land Steward*," which is a publication from the Marin Resource Conservation District for the Commission's consideration.

4. DIRECTOR'S ORAL REPORT

- a. Update on Board of Supervisors Actions
Two items: Appeal of Planning Commission's approval of Higgins Design Review and Joint Workshop with Planning Commission for Countywide Plan Update
- b. Report on On-Going/Pending Development Projects - None

5. OPEN TIME FOR PUBLIC EXPRESSION (LIMITED TO THREE MINUTES PER SPEAKER)

There were no public comments.

6. FUTURE AGENDA DISCUSSION ITEMS, FIELD TRIPS

Update on Planning Commission Actions

October 11th

- Moran Design Review Appeal
- Armstrong Garden Center Appeal

October 25th

- Salwen Coastal Permit
- Sorokko Environmental Assessment
- Kirkos Minor Design Review/Tidelands Permit

November 15th

- Moritz Coastal Permit, Use Permit, Design Review
- Antonioli Lot Line Adjustment/Precise Development Plan
- Church of Nativity/Cingular Use Permit/Design Review Appeal

November 29th

- Development Code Technical Amendments
- Oakview Master Plan

The project is to consider a proposal to construct a two-story, 1,899 square foot single-family residence and a 480 square foot detached garage on an approximately 19,400 square foot, vacant parcel in Woodacre. As proposed, the dwelling would have a maximum height of 33 feet and the detached garage would have a maximum height of 15 feet. The dwelling would maintain the following minimum setbacks from corresponding property lines: 39 feet from the northeasterly front property line (along Redwood Drive); 31 feet from the northwesterly side property line; 42 feet from the southeasterly side property line; and 62 feet from the southwesterly property line. The detached garage would maintain setbacks of 3 feet from the northeasterly front property line, 46 feet from the northwesterly property line, 58 feet from the southeast property line, 11 feet from the east elevation of the proposed dwelling, and 62 feet from the top of bank of a tributary creek across Redwood Drive. Proposed building materials include dark gray/green composition shingle roofing and natural weathering wood shingle siding. Also proposed is construction of a new on-site sewage disposal system to serve the new residence. The subject property is located at **192 Redwood Drive, Woodacre**, and is further identified as **Assessor's Parcel 172-151-39**.

(This item was continued from the hearings of June 21, 2004 and August 9, 2004, and is being recommended for further continuance to a date to be determined.)

Chairman Berland asked for a motion.

M/s, Dickenson/Greenberg, and passed unanimously, to continue the Murray Design Review to a date uncertain. Motion passed 7/0.

8. RATIFICATION OF RESOLUTION: MILLSTEIN (JAMES NOBLE) DESIGN REVIEW APPEAL CH

Proposal to construct a new, two-story, 4,169 square foot single-family residence with an attached 404 square foot garage on an approximately 43,560 square foot parcel in Kentfield. As proposed, the dwelling would have a maximum height of 30 feet above finished grade and would maintain the following approximate setbacks from the following corresponding property lines: 41 feet from the southerly front property line, 41 feet from the easterly side property line, 56 feet from the northerly rear property line, and 33.5 feet from the westerly side access easement. Also proposed is the construction of a new pool, patio and lawn area to the east of the proposed residence. The appellant sets forth the following bases of appeal: (1) the residence is not consistent or compatible with the community character and will result in visual impacts due to its size and height; (2) the project will result in excessive site disturbance and grading; (3) the hours of construction should prohibit work on weekends; and (4) additional information on drainage improvements, landscaping, and the extent of the modifications required in the Community Development Agency's decision should be provided. The subject property is located at **20 Geary Avenue, Kentfield**, and is further identified as **Assessor's Parcel 071-121-42**.

Staff presented the Commission with the revised resolution sustaining the Noble Appeal and denying the Community Development Agency's conditional approval of the Millstein Design Review.

Commissioner Holland and Commissioner Dickenson recommended several modifications to the resolution before its adoption by the Commission.

Commissioner Barner requested adding language to Item D on page 4 in regard to the fact that it is problematic to make a right turn out of the driveway and a left turn into the driveway.

Commissioner Greenberg pointed out that there is no mention that this house is accessed from Geary Avenue where all the other houses are significantly smaller. She then requested that the project site be described in terms of its access from Geary Avenue.

The hearing was opened to the public.

Mark Millstein, applicant, agreed to review the driveway in regard to making both left and right hand turns. He pointed out that currently they are following the existing contour of the hill, but appreciated the Commission's direction.

The public hearing was closed.

Chairman Berland asked for a motion.

M/s, Holland/Greenberg, adopted the resolution as amended, sustaining the Noble Appeal and denying the Millstein Design Review. Motion passed 7/0.

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. PC 04-014

A RESOLUTION UPHOLDING THE NOBLE APPEAL AND DENYING THE MILLSTEIN DESIGN REVIEW 04-20 ASSESSOR'S PARCEL 071-121-42 20 GEARY AVENUE, KENTFIELD

SECTION I: FINDINGS

- I. WHEREAS Mark Millstein is requesting Design Review approval for the construction of a two-story, 4,169 square foot single-family residence with an attached 404 square foot garage on an approximately 43,560 square foot (1 acre) parcel in Kentfield. As proposed, the dwelling would have a maximum height of 30 feet above finished grade and would maintain the following approximate setbacks from the following corresponding property lines: 41 feet from the southerly front property line, 41 feet from the easterly side property line, 56 feet from the northerly rear property line, and 33.5 feet from the westerly side access easement. Proposed building materials include "Celotex - Presidential Shake, Autumn Blend" gray asphalt shingle roofing, cedar shingle siding painted "Olympic 920 Aspen Tan," "Benjamin Moore HC-21 Huntington Beige" stucco siding, and wood and stucco trim. Also proposed is construction of a new pool, patio and lawn area to the east of the proposed residence. The subject property is located at 20 Geary Avenue, Kentfield and is further identified as Assessor's Parcel 071-121-42.
II. WHEREAS on June 30, 2004, the Community Development Agency issued a conditional approval of the Millstein Design Review granting authorization for the construction of a 4,169 square foot single-family residence with an attached 404 square foot garage on an approximately 43,560 square foot vacant parcel in Kentfield. The dwelling was approved to have a maximum height of 30 feet above finished grade and was approved to maintain the following setbacks from the following corresponding property lines consistent with "Exhibit A": 41 feet from the southerly front property line, 41 feet from the easterly side property line, 56 feet from the northerly rear property line, and 33.5 feet from the westerly side access easement. Conditions of approval required deletion of the pool and driveway entry gate, and conversion of the upper level roof from a gable to a hip design.
III. WHEREAS, a timely appeal of the Community Development Agency's approval of the Millstein Design Review has been filed by James Noble asserting the following issues: 1) the single-family residence would be incompatible with the community character and would result in visual impacts due to the overall size and scope of the project; 2) the project would result in excessive grading and site disturbance; 3) the hours of construction should be modified to reflect other recently approved projects in the area, including prohibition of construction activities on weekends; and 4) additional information is required regarding landscaping, drainage, and clarification regarding the exact size allowed for the approved yard area.
IV. WHEREAS the Marin County Planning Commission held a duly noticed public hearing on September 13, 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 voted unanimously to uphold the Noble appeal and to deny the project on September 13, 2004 subject to ratification of this resolution.

- VI. 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 15270 because CEQA does not apply to a project which a public agency rejects or disapproves.
- VII. WHEREAS the Marin County Planning Commission finds that the proposed project is inconsistent with the Marin Countywide Plan for the following reasons:
- A. EQ-3.1 (Project Review Procedures): The project would result in the removal of 43 trees. Policy EQ-3.1 refers to Table EQ-7 in the Countywide Plan (CWP) which requires that for wooded hillsides, every effort be made to retain trees in their natural setting. Overall, the extent of tree removal is excessive. Furthermore, based on the amount of site disturbance and grading, there are concerns about the chances of survival for a number of large trees on site located in close proximity to the structure. Based on this information, the project has not adequately fulfilled this policy.
 - B. EQ-3.16 (Minimize Excavating, Grading, and Filling): The proposed project would require approximately 2,400 cubic yards of grading with a net off-haul of approximately 1,800 cubic yards of excavated soil material (approximately 180, 10-cubic yard truck loads). Policy EQ-3.16 requires that development shall minimize excavating, grading, and filling while allowing for adequate access. A minimal amount of grading and excavation cannot be achieved for development of this site in consideration of its steep topography and to meet required access and parking standards of Marin County Code Sections 24.04.280 and 24.04.340. However, the proposed flat yard area located to the east of the proposed residence would be inappropriate for the hillside site based on the levels of grading and tree removal required to construct those improvements.
 - C. EQ-3.25 (Scale of Development): The proposed residence is significantly larger than most other homes in the adjacent area, but would result in a floor area ratio (FAR) that is comparable to development in the neighborhood given the comparatively larger size of the property. However, due to the steep topography of the subject property (approximately 50% slope) and its unique transitional location between residential development to either side of Geary Avenue (smaller homes to the south along Geary and Altamira Avenues, larger homes to the north along Toussin Avenue), the size of the proposed structure would be out of scale with other development in the neighborhood. The structure would have a looming, obtrusive presence in the neighborhood due to cumulative effects of its frontage along Geary Avenue, overall profile, anticipated amounts of grading and tree removal, and general elevation above the majority of smaller homes to the south of Geary Avenue below.
 - D. H2.2 (Design that Fits into the Neighborhood Context): The project would not enhance the neighborhood identity and sense of community because the proposed 4,573 square foot residence would be approximately 2,000 square feet larger in size and overall scale than the much smaller homes that characterize the historic development patterns in the area (the average home size of the homes at 7, 9, 11 and 13 Altamira Avenue, and 6, 8, 10, and 16 Geary Avenue amount to 2,570 square feet in floor area – including garage).
- VIII. WHEREAS the Marin County Planning Commission finds that the proposed project is inconsistent with the Kentfield/Greenbrae Community Plan because the project would require excessive grading and tree removal, and would result in a development that is out of scale with respect to the immediate neighborhood (Policy Item 8, Subarea G). The proposed project would result in a large residence that would appear in stark contrast to smaller homes located at a lower elevation to the south which are situated along the street from which the proposed development is accessed. While large homes do exist in the surrounding neighborhood, the proposed development is not appropriate for the site because the proposed residence would be out of scale with the streetscape and many of the existing homes in the area that provide a context for the neighborhood most affected by the project.

IX. WHEREAS the Marin County Planning Commission finds that the proposed project is inconsistent with the development standards RMP-5.0 zoning district (Chapter 22.16 of the Marin County Code) because the proposed project would be inconsistent with standards established for the protection of trees and vegetation, minimization of grading, and effective use of landscaping. The proposed project would disturb approximately 45% of the steeply sloped (approximately 50% slope) property, including the removal of at least 43 existing trees as a result of excavation and grading for construction of an approximately 120-foot long access driveway. Large retaining walls (up to 13 feet in height) required for the construction of the yard, driveway, and turnaround areas would substantially alter the natural terrain resulting in approximately 450 lineal feet of partially visible retaining walls. The proposed landscaping is inadequate and should incorporate larger specimens of drought tolerant, native plant species. For the reasons discussed above, the project would not be consistent with the regulatory standards of the RMP zoning district.

X. WHEREAS the Marin County Planning Commission finds that the Millstein Design Review application is inconsistent with the mandatory Design Review findings 1, 2, 4, 5, 6a, 6c, 6d, 6e, and 8 below (Section 22.42.060 of the Marin County Code).

1. 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.

The proposed residence, driveway, and yard area would not satisfy their functional requirements without being unsightly or creating substantial disharmony with its locale and surroundings because the project would result in a large residence and level outdoor activity area being imposed on a steeply sloped (approximately 50% slope) hillside property resulting in development that is out of character with the natural topography of the site and much of the residential development in the area. The overall size and scope of the project would adversely contrast with the surrounding steeply sloped natural hillside environment as opposed to blending with it.

2. 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.

The proposed project may impair the orderly and pleasing development of the neighborhood as a whole, because the proposed project would result in the development of a large residence that is out of scale with smaller residential development in the area.

3. It 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 project would not impair further investment or improvements in the vicinity because the proposed structure, if built, would be required to comply with safety standards as established by the Uniform Building Code.

4. 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.

The proposed project would involve the removal of at least 43 trees. The extent of site disturbance resulting from the project (45%) does not maximize retention of trees and minimize alterations to the steeply sloped natural topography (approximately 50% slope). Although the applicant has proposed a

number of tree and plant specimens to provide screening for the structure, many of the plant and tree species are slow growing and would require a significant amount of time to fill in around the structure and effectively screen and soften its appearance from off-site locations. The proposed plantings would provide minimal screening and would not counteract the amount of site disturbance incurred by the project.

5. 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 project would not be in compliance with the design and locational characteristics listed in Chapter 22.16 (Planned District Development Standards) of the Marin County Development Code for the reasons discussed in Finding VIII above.

6. It will minimize or eliminate adverse physical or visual effects that 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:

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

Although the proposed residence incorporates many design techniques encouraged in hillside development, the overall size and scale of the structure would contrast with the surrounding steeply sloped natural hillside environment (as opposed to blending in with the surrounding natural environment), result in excessive grading and tree removal, and result in a development that is out of scale with the uniform single-family residential development on the smaller, level lots in the area.

b. Drainage systems and appurtenant structures;

The drainage system for the project has been preliminarily reviewed and accepted by the Department of Public Works. As part of the Building Permit review, the Department of Public Works will review the grading and drainage plans to ensure that the project incorporates drainage systems that will adequately collect, convey and distribute surface run-off into appropriate drainage systems.

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

The proposed project does not minimize the reforming of the natural terrain because it would disturb approximately 40% to 45% of the steeply sloped (approximately 50% slope) property, including the removal of at least 43 existing trees as a result of excavation and grading for construction of an approximately 120-foot long access driveway. Additionally, large retaining walls (up to 13 feet in height) required for the construction of the yard, driveway, and turnaround areas would substantially alter the natural terrain resulting in approximately 450 lineal feet of retaining walls.

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

The configuration of the driveway may interfere with the movement and circulation of persons because vehicles traveling east along Geary Avenue from Toussin Avenue would experience difficulty turning left into the driveway, and vehicles exiting the property would have difficulty

making a right turn onto Geary Avenue, effectively forcing traffic to the property to use Altamira Avenue.

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

The residence has been designed to step up the hillside in an effort to minimize the visual profile of the structure as viewed from off-site locations. However, the proposed colors and materials would not blend the structure in with the surrounding natural environment to the greatest extent feasible. Finally, the overall scale and size of the residence, along with proposed colors, materials, and site disturbance, would result in a project that does not minimize its visual presence as viewed from off-site locations.

- 7. **It includes features that foster energy and natural resource conservation while maintaining the character of the community.**

The residence would foster energy and natural resource conservation because it will be required to meet the standards of Marin County Ordinance 3356 (Energy Efficiency Standards for Single Family Dwellings).

- 8. **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 project is inconsistent with policies in the Marin Countywide Plan, and the Kentfield/Greenbrae Community Plan for the reasons discussed in Findings VII and VIII above. As such, the construction of the single-family residence could be detrimental to the public interest, health, safety, convenience or welfare because the project would result in development that is out of scale and incompatible with other development in the vicinity.

- XI. WHEREAS the Marin County Planning Commission finds that the project could be consistent with the County's land use plans, policies, and standards by modifying the site and building design in the following manner:

- A. Reduce the amounts of grading and site disturbance by eliminating the yard area, minimizing the length and height of retaining walls, and considering alternate locations for driveway access that would provide adequate ingress and egress to the property;
- B. Utilize darker, earth-toned colors and materials for roofing, siding, trim, and other site improvements including, but not limited to, retaining walls and driveway surfaces;
- C. Reduce the overall size of the residence;
- D. Continue to utilize a simple, split-level design that steps up the hillside; and,
- E. Submit a landscaping plan that minimizes tree removal, includes larger and/or faster growing vegetation and incorporates a vegetation/fuels management program.

SECTION II: ACTION

NOW, THEREFORE BE IT RESOLVED that the Marin County Planning Commission sustains the Noble Appeal and denies the Millstein Design Review application.

SECTION III: 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 **October 7, 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 27th day of September, 2004, by the following vote to wit (7/0):

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

NOES: None

ABSENT: None

ALAN BERLAND, CHAIRMAN
MARIN COUNTY PLANNING COMMISSION

Attest:

Jessica Woods
Recording Secretary

9. DESIGN REVIEW APPEAL: LAMAR (KENT WOODLANDS PROPERTY OWNERS ASSOCIATION)
MB

Proposal to demolish the existing residence and construct a 4,187 square foot residence with a 562 square foot attached garage that attains a height of 25 feet above grade and maintains the following setbacks from the nearest corresponding property lines: 11.5 feet from the western front property line, 31 feet from the southern side property line, over 100 feet from the eastern rear property line, and 15 feet from to the northern side property line. Included in the proposal is the construction of a new outdoor barbecue that is located 0 feet from the western front property line, a new spa located 19 feet to the southeast of the residence, and new retaining walls in the northern side yard. The subject property is located at **25 Westwood Drive, Kentfield**, and is further identified as **Assessor's Parcel 075-062-05**.

Megan Basinger, Assistant Planner, summarized the staff report and recommended that the Commission deny the Kent Woodlands Property Owners Association's (KWPOA) appeal and sustain the Community Development Agency's conditional approval of the Lamar Design Review application.

In response to Commissioner Greenberg's question regarding the size of the parcel, staff responded that the parcel is 23,356 square feet. Staff also provided a material and color board for the Commission's consideration.

In response to Commissioner Barner's question about the date of the present residence, staff responded that the residence was constructed in the 70s. Staff also noted that the RSP zoning district did not require a minimum lot size, but rather a maximum density.

Commissioner Greenberg believed the colors are critical and with the information provided to the Commission she is unable to make a decision in that regard.

In response to Chairman Berland's question about why this matter is before the Commission when KWPOA has the authority to deny the project pursuant to the community's CC&Rs, staff responded that action by the County could be taken on the project without the Association's approval.

The hearing was opened to the public.

Barry Evergettis, appellant, objected to the project due to the constraints on the lot. He then provided the Commission with photographs for their consideration. He stated that the size and mass of the house interferes with the main view of the home at 35 Westwood and interferes with the light and shadows of the homes below 35 Westwood. The FAR's in general run 10% or less and this proposed house would take it up to 20%. He believed landscaping is not an appropriate method to hide architecture. He stated that the proposed home is not in keeping with the character of the woodlands. He also believed privacy and seclusion should be considered. He further agreed that all individuals should be able to improve their property, but not to the detriment of a neighbor.

Arlene Dinges, appellant, appreciated staff being careful about the trim color. She further noted that she did not find the yellow trim color to be in conformance with the existing surroundings.

Commissioner Julin desired to view the assessor's parcel map in order to better understand the location of 35 Westwood. Mr. Evergettis approached the screen and pointed out the area for the Commission's review. Staff provided the Commission with an aerial photograph for their review as well.

Ms. Dinges pointed out that 35 Westwood lot is 23,400 square feet with current living area being 3,416 square feet.

Commissioner Dickenson asked staff if there has been any opposition expressed by the property owners of 35 Westwood and 75 Upland. Assistant Planner Basinger did not receive any comments in response to the public notice.

Mr. Evergettis noted that they would enforce the KWPOA CC&R's. He stated that they met privately to reduce the size of the home, but no resolution has been reached. Chairman Berland clarified that if Lamar receives approval from the Board and the Commission, construction could be stopped through the CC&R's. Mr. Evergettis responded in the affirmative.

Lisa Lamar, applicant, agreed with the conditions set forth. She addressed the issue with the neighbors and there are no concerns in regard to the development. She discussed the matter on several occasions and no one came forward objecting. She stated that the home itself is too small for three children and she loves the location and neighborhood as well as the school district. She further desired a better living space for her family.

Pete Pedersen, landscape architect, provided several photomontages that addressed screening that showed plant material in a three to five year projection for the Commission's review. He further believed landscaping could be an appropriate tool for screening and privacy.

Adam Gardner, architect, explained that the intent was to have white trim, but that is not well received, so he provided a color board that shows a dark composition roof and color of the home for the Commission's consideration.

Commissioner Dickenson asked Mr. Gardner if the intent is to have natural cedar shingles. Mr. Gardner responded that they would be lightly stained with a sealer.

The public hearing was closed.

Commissioner Greenberg appreciated KWPOA's input and her inclination is to support such a group, but in this circumstance, she did not find a lot of merit for the basis of the appeal. She believed the house with staff's conditions did not seem overwhelming in this setting to the neighbors and she would be inclined to approve the project with the following modifications: darker color used on the siding; fire rated shingles; and a dark trim color.

Commissioner Dickenson agreed with Commissioner Greenberg's comments, but would not require fire rated cedar shingles because after a short period of time it has no effect whatsoever. He indicated that he is prepared to deny the appeal and approve the house with all the modifications, except for fire rated cedar shingles.

Commissioner Holland concurred that fire-rated shingles are effective for only 5-7 years. He discussed the culvert and easement located behind the house and noted that they constrain this parcel more than any other factor or condition. He stated that the only area available for additional development on the project site is between the roadway and the easement. He believed this is a good example as to why FAR's are not good indicators of what is occurring. He noted that he is inclined to sustain the appeal because too much development is being squeezed onto this lot. He recommended extending the expansion of the residence into the driveway only half as far as is currently proposed. He expressed concern for the barbeque being located on the property line and believed some setback should be required. He noted that he would vote in favor of sustaining the appeal.

Commissioner Julin stated that the actual size of the new residence is not out of line with the homes at 35 Westwood and 75 Upland. However, the KWPOA have some good suggestions and desired feedback from the Commission in regard to their letter dated May 27, 2004 as follows: recess south easterly corridor to reduce the apparent mass of the structure; and require that the design of the structure step down the hillside with one and two-story elements.

Commissioner Thompson discussed the May 27th letter in regard to retaining walls, fill, and height of fill and recommended reducing the section by two to three feet in order to reduce the retaining wall. He also believed wildlife corridors should be allowed through these properties and asked that it be addressed as well as natural barriers such as hedges. He also recommended staggering the walls in order to have a soft landscaping between the steps. He discussed parking and the need to have all spaces accessible, so the retaining wall that is five feet high

composed of concrete block could be pushed off the property line in order to rethink the outdoor parking. He commented on the requirement of local controls asking for preservation of sun and light and desired language to stipulate how that could be maintained and by whom. Lastly, he believed the barbeque could be an issue and that should be addressed. He further noted that he did not have a major problem with the house or the size of the development, but expressed concern for these details.

Commissioner Barner stated that from a planning standpoint, consistency has certain merits and they must review the size of the houses in comparison to the size of lots, which translates into community character. Lot size equals density and density is a factor in regard to community character in his opinion. Also, he did not believe special compensation is needed to correct a situation that did not exist. He noted that he could not make some of the findings necessary, but believed some suggestions made by Commissioners Julin, Holland, and Thompson might mitigate some of his concerns.

Chairman Berland supported staff's decision to deny the appeal. He did not believe the size is inconsistent with the size of the neighborhood and had no objection with the setbacks and in his view it would not set a precedent. He expressed concern about the barbeque and suggested removing the barbeque or locate it further back.

Commissioner Thompson discussed the KWPOA points and recommended the following: stepping back walls making them four feet; replace fences with hedges whenever space permits; investigating the shingle treatment; parking redesigned to eliminate the retaining walls on the property line; redesign parking to use tandem parking for the exterior parking; and landscaping condition to preserve sun and light.

Commissioner Greenberg desired a darker color than what is proposed in regard to the cedar siding. Also, the trim color must be a darker color and the height must be reduced. She further expressed concern for Commissioner Thompson's suggested conditions because more examination is needed to understand whether they are reasonable.

Commissioner Barner expressed concern for crafting resolutions because of all the unintended consequences and believed it is fair to convey concerns to staff and then have staff review and come back with suggested language. He noted that today is the last day for action, so the Commission is in the position of asking for the applicant and the appellant to allow additional time to craft a resolution in regard to the issues that were raised.

Commissioner Julin recommended a continuance in order for the applicant to work with staff and appellant on the issues.

Commissioner Thompson recommended compliance with the letter of May 27th 2004, which outlined all the conditions of development approval with Kent Woodlands.

Chairman Berland asked the appellant and owner if they are willing to continue the matter to establish solutions to meet the Commission's concerns. Mr. Gardner explained that they are present today because a resolution could not be reached with the KWPOA and they desired the Commission's approval on this issue today.

Commissioner Dickenson pointed out that there is not clear direction to staff and he did not believe the house needed to be reduced or have the parking redesigned because the Commission has not reached consensus. He noted that the Kent Woodlands letter raises many issues and he did not believe enough direction has been given.

Commissioner Holland believed too much time has been spent on the matter without reaching a consensus, so the benefit of the doubt must go to the property owner.

Chairman Berland asked for a motion.

M/s, Holland/Dickenson, to deny the Kent Woodlands Property Owners Association appeal and sustain the Lamar Design Review application.

Agency Director Hinds clarified the following modifications to the approval resolution:

- Darker trim color;
- Lower retaining walls to a maximum height of four feet, if possible; and
- Investigate the feasibility of treating shingles with a fire retardant.

Commissioner Greenberg requested that darker siding be added to the conditions of approval and lowering the retaining walls for the parking area to four feet. Commissioner Holland agreed to the amendments except for fire-retardant side-wall shingles, which is not part of the motion, and also added eliminating the barbeque.

Commissioner Dickenson agreed with the amendments.

Motion passed 4:3 (Vice Chair Thompson and Commissioners Barner and Julin opposed).

Chairman Berland announced at 3:47p.m. that the Commission would take a short recess and then reconvene with the last agenda item.

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. PC 04-16

**A RESOLUTION DENYING THE KWPOA APPEAL AND SUSTAINING THE
COMMUNITY DEVELOPMENT AGENCY'S APPROVAL OF THE LAMAR DESIGN REVIEW
25 WESTWOOD DRIVE, KENTFIELD
ASSESSOR'S PARCEL 075-062-05**

SECTION I: FINDINGS

- I. WHEREAS Steve and Lisa Lamar are requesting Design Review approval to demolish the existing residence and construct a 4,187 square foot residence with a 562 square foot attached garage that has a maximum height of 28 feet above grade and maintains the following setbacks from the nearest corresponding property lines: 11.5 feet from the western front property line, 31 feet from the southern side property line, over 100 feet from the eastern rear property line, and 15 feet from to the northern side property line. Included in the proposal is the construction of a new outdoor barbecue that is directly adjacent to the western front property line, a new spa located 19 feet to the southeast of the residence, and new retaining walls in the northern side yard. The residence is proposed to be finished in a stone veneer and painted shingle siding. The subject property is located at 25 Westwood Drive, Kentfield and is further identified as Assessor's Parcel 075-062-05.
- II. WHEREAS on July 29, 2004, the Community Development Agency issued a conditional approval of the Lamar Design Review granting authorization for the demolition of the existing residence and the construction of a new, 4,187 square foot residence with a 562 square foot attached garage. The conditions of project approval require the applicant to revise the height of the residence to a maximum of 25 feet above grade, either by reducing the height or by modifying the roof pitch from 5:12 to 4:12 or an equivalent means.
- III. WHEREAS, a timely appeal of the Community Development Agency's approval of the Lamar Design Review has been filed by the Kent Woodlands Property Owners Association asserting the following issues: 1) the new residence will result in visual impacts to neighboring properties due to the increased size, change in siting, and reduced setbacks; 2) adequate guest parking is not provided on the site; and 3) the change in topography due to the fill is not appropriate for the area.
- IV. WHEREAS the Marin County Planning Commission held a duly noticed public hearing on September 27, 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 Categorical Exempt from the requirements of the California Environmental Quality Act pursuant to Section 15303, Class 3 of the CEQA Guidelines because it entails demolition of the existing residence and construction of a new single family residence that will not result in 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 SF3 (Single-family Residential, one unit per one to five acres maximum density) 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 the proposed project is consistent with the following Countywide Plan and Kent Woodlands Land Use and Policy Report policies.

- A. The size of the proposed residence is consistent 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.
- B. 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.

VIII. WHEREAS the Marin County Planning Commission finds that the proposed project, is consistent with all of the mandatory findings to approve the Lamar Design Review application (Section 22.42.060 of the Marin County Code) as specified below.

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

The residence has been sited so that it maintains a setback of 11.5 feet from the southwestern front property line, 31 feet from the southern side property line, over 100 feet to the eastern rear property line, and a 15-foot setback from the northern side property line and will be substantially screened from the street by existing and proposed vegetation. As proposed, the structure will: (1) conform with the Kent Woodlands Land Use Policy CD 1.5a for the northern side, southern side and southeastern rear setbacks, the proposed 11.5-foot southwestern front yard setback allows the property owners to construct the residence in a manner that is compatible with the development pattern of the existing residence and still maintain an effective setback of over 32 feet from the edge of pavement on Westwood Drive (due to the setback of 21 feet from the front property line and the edge of pavement). A relaxation of the minimum front yard setback that is recommended in the KWLUPR is appropriate given the irregular lot shape and configuration, furthermore, the residence will maintain adequate setbacks to the neighboring residences; (2) be compatible with the site and other properties in the

vicinity with respect to siting; and (3) incorporate characteristics of scale, architectural design, and exterior color and building materials that are compatible with the surrounding area.

- B. 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 project will not impact view, light, air, and privacy of surrounding residences or public areas due to the following reasons: (1) the existing and proposed landscaping on the subject property would provide adequate visual screening and privacy buffering between the residence and adjoining properties; (2) the residence height of 25 feet, as modified by the conditions of approval, does not exceed the 30-foot height limit for the governing RSP-1.0 zoning district; (3) the building height, bulk, and mass have been designed to preserve the use and enjoyment of surrounding properties and are reasonable and appropriate given the size, configuration, and topography of the subject property; and (4) the relaxation of the minimum setbacks along the front property line will preserve existing vegetation, and will not interfere with neighboring properties.

- C. 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 discussion contained in Findings A and B is supportive of this finding.

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

The proposed development includes the removal of 5 trees from the subject property. The applicant has provided a landscape plan that will add over 25 new trees to the site ranging in size from 24-inch box to 48-inch box at planting. The landscape plan also includes large shrubs that will provide screening in combination with the vegetation that will be retained.

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

The residence has been designed to be compatible with the site in regards to height, exterior color, and building materials. The location of the residence has been identified as an issue with the KWPOA because it does not meet the setbacks recommended in the KWLUPR for front and rear yard setbacks. As discussed in Finding A, the setbacks are appropriate given the size and configuration of the property and do not intrude on the privacy of the neighboring property to the north or increase visibility from Westwood Drive. Measures have been taken to allow the residence to blend into the natural environment by providing additional screening on all sides of the residence. As discussed in Findings A and B above, the proposal would not prevent the development, use, or enjoyment of other properties in the vicinity because no detriment with respect to light, air, privacy, height, and land use factors would result.

F. 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 residence has been sited in a location that best meets the setback requirements recommended by the KWLUPR. The 4,187 square foot residence is compatible in terms of square footage with surrounding development and has been designed to reduce its impacts on neighboring properties. The maximum height of 25 feet above grade, as modified by conditions of approval, is consistent with the height limitations of the governing zoning district and the KWLUPR. The proposed materials of stained cedar shingle siding and stone veneer will have a natural appearance that will allow the residence to blend into the hillside.

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);

As proposed, the residence has been sited on the existing building pad and will require 10 cubic yards of cut and approximately 150 cubic yards of fill.

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.

The siting of the residence will not eliminate the sun and/or light exposure on adjacent properties, or result in the elimination of views, vistas, or privacy. The installation of the landscaping, will provide additional screening of the property when viewed from off-site locations.

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

The residence will be required to comply with the County's energy efficiency ordinance by incorporating energy efficient building materials and appliances.

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.

The proposal to construct a single-family residence and accessory structure is consistent with the Marin Countywide Plan designation of SF3, single-family residential, one unit per one to five acres and with the governing RSP-1.0 zoning district. The structures have been designed to be compatible with the natural environment and will not be detrimental to the surrounding properties.

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

Appeal: *The new residence will result in visual impacts to neighboring properties due to its increased size, the change in siting, and the reduction of setbacks from the KWLUPR standards.*

Response to Appeal:

The siting and height of the new residence would not create a substantial visual impact on neighboring properties. The existing and proposed residences, as depicted by the story poles and the photos that have been enhanced and included in the KWPOA appeal, are visible from 35 Westwood Drive and 75 Upland Road. The new residence will result in a building that is more visible than the existing smaller residence located on the property, but would be substantially screened from off-site locations by existing and proposed vegetation. The footprint of the residence is being expanded 5 feet to the northwest, toward the driveway and will extend 22 feet further than the current residence; it will also extend 13 feet toward the northeastern side property line. KWLUPR Policy 1.5 states that size, height, and setbacks shall be carefully regulated to maintain community compatibility. The policy is implemented through the application of the R-1: B-3 zoning district that requires the following setbacks: 1) 30 feet for front yard; 2) 15 feet for side yards; and 3) 20% of lot depth up to 25 feet for the rear yard. The KWLUPR states that these setbacks may be relaxed through the design review process where the County finds that it is necessary for the reasonable use of the site. The residence will maintain an 11.5 foot front yard setback, where 30 is recommended in the KWLUPR, however, the proposed setback is appropriate given the irregular shape of the existing lot and the opportunity to use much of the existing developed area of the property to construct the residence and still maintain an effective setback of over 32 feet from the edge of pavement on Westwood Drive (due to the setback of 21 feet from the front property line and the edge of pavement). Furthermore, the residence will maintain adequate setbacks to the neighboring residences. The conditions of project approval require the applicant to reduce the height of the residence by 3 feet, which should serve to further minimize the visual effects of the project. The reduction could be accomplished by either reducing the height or by changing the roof pitch, reducing the potential visibility of the residence.

Appeal: *Adequate on-site guest parking is not provided on the property.*

Response to Appeal:

The Planning Division does not apply setbacks to driveways and uncovered parking areas. The new residence extends 22 feet into the existing driveway, but still provides adequate space for on-site parking and turnaround as determined by the Department of Public Works. Four on-site parking spaces, two of which must be independently accessible are required; the plans that have been reviewed and accepted by the Department of Public Works identify four independently accessible on-site parking spaces. In order to accommodate the modified driveway and parking plan, retaining walls, with a maximum height of 5.5 feet above grade, will be constructed 4.5 feet from the northern side property line and will be landscaped with screening shrubs that will fill in the existing Oleander shrubs. The existing retaining walls that are located on the site range from a maximum height of 3 feet above grade to 5 feet above grade and are constructed from wood and concrete. Several rock landscape walls are also located on the site.

Appeal: *The change in topography, raising the grade by 7 feet at the southerly end of the residence, is inappropriate.*

Response to Appeal:

The residence will be sited at the same elevation as the existing residence that will be demolished. The landscape improvements, which consist of a patio and lawn area, will require approximately 150 cubic yards of fill to create a level area. The location of the proposed improvements is currently developed with decking and terraced areas. The new improvements will be sited in the same location as the existing decking and terraced areas, and at approximately the same elevation. Due to the configuration and slope of the lot, the residence has been sited in a location that takes advantage of the existing building pad and landscape improvements and does not require extensive site disturbance.

SECTION II: PROJECT APPROVAL

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

Marin County Community Development Agency, Planning Division

1. Pursuant to Marin County Code Chapter 22.42, the Lamar Design Review is approved to demolish the existing residence and construct a 4,187 square foot residence with a 562 square foot attached garage that attains a height of 25 feet above grade and maintains the following setbacks from the nearest corresponding property lines: 11.5 from the western front property line, 31 feet from the southern side property line, over 100 feet to the eastern rear property line, and 15 feet to the northern side property line. Included in the approval is the construction of a new spa located 19 feet to the southeast of the residence, and new retaining walls in the northern side yard. The subject property is located at 25 Westwood Drive, Kentfield, and is further identified as Assessor's Parcel 075-062-05.
2. 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 "Lamar Residence" consisting of: 1) five sheets prepared by Hunt Hale Jones Architects, dated March 5, 2004; 2) one sheet prepared by Pedersen Associates Landscape Architects received March 22, 2004; 3) one sheet prepared by the Marin County Department of Public Works with parcel information provided by Hunt Hale Jones Architects; and 4) three sheets prepared by Lawrence P. Doyle, Land Surveyor/Civil Engineer dated March 5, 2004.

3. Except as modified by Condition 4.d below, exterior building colors and materials shall be in substantial conformance with the following: (1) gray composition shingle roofing; (2) "El Dorado" stone veneer; and (3) clad wood windows and doors, as depicted on "Exhibit B." All flashing, metal work, and trim shall be an appropriately subdued, non-reflective color. Deviations from the approved colors and materials shall be submitted for review and approval by the Community Development Director.
4. The barbeque pit shall be removed from the plans.
5. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall fulfill the following requirements:
 - a. The applicants shall revise the site plan or other first sheet of the office and job site copies of the Building Permit plans to list these Design Review Conditions of Approval as noted.
 - b. The applicant shall revise the plans to depict the location and type of all exterior lighting for review and approval of the Community Development Director. Exterior lighting shall be permitted for safety purposes only, must consist of low-wattage fixtures, and must be directed downward and hooded. Cut sheets or details of all exterior lighting fixtures shall be included in the building permit plans.
 - c. The applicant shall revise the height of the residence to a maximum of 25 feet above grade. This can be accomplished by modifying the roof pitch from 5:12 to 4:12 or an equivalent means.
 - d. The applicant shall submit revised samples of exterior colors for review and approval by the Community Development Director. In particular, the exterior trim and siding shall be dark, earth-toned colors as determined by the Director. The shingle siding and roofing material shall comply with the applicable fire rating standards as determined by the Kentfield Fire Protection District.
 - e. The applicant shall lower the height of retaining walls to a maximum of 4 feet above finished grade, unless the Director determines that complying with this height limit is infeasible or impractical based upon evidence submitted by the applicant. Stepped retaining walls with intermediate landscaping may be required, at the discretion of the Director, to comply with this condition.
6. Construction activity is only permitted between the hours of 7:30 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.
7. 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.
8. All soils disturbed by development of the project shall be reseeded with native grasses or wildflowers to control erosion.
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. BEFORE FINAL INSPECTION, the applicant shall fulfill the following requirements:

- a. The applicant shall install all proposed and required landscaping and a drip irrigation system to serve it. The applicant shall call for a Community Development Agency staff inspection of the landscaping and irrigation at least five working days before the anticipated completion of the project. Failure to pass inspection will result in withholding of the occupancy certificate and imposition of hourly fees for subsequent re-inspections.

11. 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

12. PRIOR TO ISSUANCE OF A BUILDING PERMIT, the applicant shall fulfill the following requirements:

- a. A “Stability Report” must be submitted. The report shall be prepared by a Registered Civil Engineer with soils engineering expertise or a Registered Geotechnical Engineer and must attest to the suitability and geological feasibility of placing a building on the site, the suitability of excavating for the retaining walls, and identify any drainage or soils problems that the design of the project must accommodate.
- b. The plans shall be reviewed and approved by a registered Soils Engineer. Certification shall be either by the engineer’s stamp and signature on the plans, or by stamp and signed letter.
- c. A separate Building Permit is required for site/driveway retaining walls with a height more than 4 feet (or three feet when backfill area is sloped or has a surcharge).
- d. Submit an Erosion and Siltation Control Plan if grading or site disturbance is to occur between October 15th and April 15th.
- e. Note on the plans that the Design Engineer shall certify to the County in writing (include signature and stamp) that all grading, drainage work, and retaining wall excavation and construction was done in accordance with plans and field directions. Describe all field changes. Also note on the plans that prior to final inspection, the driveway, parking, frontage, and site improvements shall be inspected by a Department of Public Works engineer.
- f. An encroachment permit is required for work within the road right-of-way including the installation of landscaping.

Marin Municipal Water District

13. All landscape and irrigation plans must be designed in accordance with the most current District landscape requirements (Ordinance #385). Prior to providing water service for new landscape areas, or improved or modified landscaped areas, the District must review and approved the project’s working drawings for planting and irrigation systems.

Ross Valley Sanitary District

14. A sewer connection permit is required for the new residence and may be issued upon payment of the applicable fees after the building permit is issued. Credit will be given for the fixture units in the demolished

structure, provided that they are counted by a District Inspector prior to the demolition, or can otherwise be verified.

15. If the existing sewer lateral is not used or replaced, it must be plugged off per District specifications.
16. In order to use the existing sewer lateral for the rebuild, the sewer lateral must be tested in the presence of a District Inspector. If the existing sewer lateral passes the test, it must be equipped with the appropriate backwater relief device. If it fails the test, it must be replaced with a new sewer lateral.
17. All alterations to the sewer lateral must meet District specifications and be inspected by a District Inspector before it is covered.

Kentfield Fire Protection District

18. PRIOR TO FRAMING INSPECTION, the applicant shall upgrade the fire hydrant at Upland Road and Westwood Drive to Kentfield Fire Protection District specifications.
19. PRIOR TO FINAL INSPECTION, the applicant shall fulfill the following requirements:
 - a. The applicant shall install a fire alarm system in compliance with Marin County and Fire District standards.
 - b. The applicant shall install a fire sprinkler system in accordance with NFPA 13R and Kentfield Fire District Ordinance 107.
 - c. Class "A" roofing is required on all new construction.
 - d. The driveway gate must have a minimum opening of 12 feet and have an entry access system for the Fire District at the gate. The gate shall be a minimum of 30 feet from Westwood Drive. The guest parking shall not interfere with emergency access to the residence.
 - e. Wire or non-combustible mesh spark arrestors with a maximum opening of ½ inch are required on all chimneys.
 - f. The address shall be clearly visible and legible from the street.

SECTION III: VESTING OF RIGHTS

The applicant must vest this Design Review approval by securing a Building Permit for all of the approved work and substantially completing all approved work by September 27, 2006, 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 Director approves it. Design Review extensions to a total of not more than four (4) years may be granted for cause pursuant to Marin County Code Section 22.56.050.

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 \$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 October 7, 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 27th day of September, 2004, by the following vote to wit (4/3):

AYES: Berland, Dickenson, Greenberg, Holland

NOES: Barner, Julin, Thompson

ABSENT: None

ALLAN BERLAND, CHAIRMAN
MARIN COUNTY PLANNING COMMISSION

Attest:

Jessica Wood
Recording Secretary

10. REZONING, MASTER PLAN, DESIGN REVIEW, USE PERMIT AND
DETERMINATION OF THE EXTENT OF LEGAL NONCONFORMITY:
SAN RAFAEL ROCK QUARRY

TKL

On August 23, 2004, the Planning Commission conducted a public hearing to consider a proposed Master Plan, Design Review, and Use Permit application from the San Rafael Rock Quarry to legalize six office buildings totaling 14,651 square feet and a proposed Rezoning of the approximately 276-acre property from a RMPC (Residential Multiple Planned Commercial) zoning district to an IP (Planned Industrial) zoning district. Prior to the August 23, 2004 hearing, the applicant revised the project by proposing to remove four of the six office buildings and retain two office buildings (totaling 5,705 square feet). The applicant asserts that the modified office use should be considered as part of the legal nonconforming quarry use of the property. The purpose of the continued public hearing is for consideration to be given of additional information from the applicant that would support this contention. The Planning Commission will consider making a determination on the extent of the legal nonconforming office use on the property. 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**.

(This item was continued from the hearing of August 23, 2004.)

Thomas Lai, Principal Planner, summarized the staff report and recommended that the Commission review the administrative record including the additional information set forth in the memorandum; conduct a public hearing; move to adopt the proposed resolution approving the continued use of one office building for the San Rafael Rock Quarry; and direct the applicant to: 1) complete Building Permit requirements for one office building and the conversion of a second office structure back to a residence within 90 days; 2) upgrade sewage disposal system; and 3) remove four offices within six months.

Commissioner Dickenson pointed out that the nature of the office use has changed considerably. Principal Planner Lai agreed and noted that part of the reason for the hearing is for the applicant to provide convincing evidence that the two proposed offices and 15 employees are essential for the current operation of the Quarry.

Principal Planner Lai noted that the 1,100 square feet of offices that staff previously estimated was based on the 1982 Reclamation Plan's topographic map of existing conditions and the assumption that the offices would have been located in the vicinity of the current offices and that no offices would have existed within the actual quarry operations area. In the vicinity of the current office location, there were three small structures that staff used to formulate the estimated size of 1,110 square feet. Under the zoning ordinance's requirements applicable to non-conforming structures, it would not be possible to support expansion of the amount of office space that existed at the time the non-conformity was established. However, due to the principles that were articulated in the Hansen case, expansion of non-conforming offices uses may be allowed in the case of a quarry operation as long as the applicant demonstrates that the additional office spaces are integrally related to the quarry operations.

Commissioner Barner asked staff if all 15 quarry administrative positions were necessary to support the quarry operations. Principal Planner Lai responded that such a review of job descriptions could be problematic but that the Commission could request the applicant to provide the justification for these positions should that be necessary to support the determination of the amount of office space that is needed to support the quarry operations.

Commissioner Julin asked staff if there is an advantage of one use over the other in regard to public interest in relation to residential versus office. Principal Planner Lai responded that there is a slight benefit to have residential use (for the Larson structure) because it is more consistent with the residential zoning, would provide potential employee housing opportunities, and would allow a structure that has been there for years to remain.

Commissioner Holland asked County Counsel if any options that have been provided to the Commission would have a legal impact. David Zaltsman, County Counsel, responded that he is unable to answer that question. Agency

Director Hinds believed that if the parties are not satisfied with the decision, it could ultimately be decided before Judge Sutro. Staff believed what is recommended is reasonable.

Commissioner Holland discussed County Counsel's memo and asked if the increased office space has to be on-site. County Counsel Zaltsman responded that under Hansen, increases in incidental and auxiliary uses may be allowed if the owner proves to the Commission that the increased uses are essential to full operation. He believed the Commission must review the evidence and make a determination based on the evidence.

Commissioner Greenberg desired data in regard to whether the Quarry operations had increased from 1982 levels. Principal Planner Lai agreed to provide whatever information staff had in that regard to the Commission.

Commissioner Dickenson understood that the Larson trailer was one of the residential mobile homes approved by the County. Principal Planner Lai responded that the 1986 Use Permit's site plan identifies the Larson residence as an existing structure but that it was not one of the two residences that were approved as part of the Use Permit. Those residences were identified as the Lucas and Stephenson residences. Commissioner Dickenson believed the decision is being driven by the size of the existing buildings, and other options should be explored.

The hearing was opened to the public.

Gary Giacomini, attorney, representing San Rafael Rock Quarry, stated that there are six office buildings currently and they total 16,000 square feet. The proposal is to remove four and keep two for a total of 5,705 square feet with a reduction of two-thirds of the office buildings. He stated that within the overall context they have a right to reasonable office buildings for the Quarry and they believe this is a reasonable approach. Also, this is a very reasonable proposal for an enterprise and 15 employees are reasonable to operate the Quarry. He pointed out that the employees are critical to the operations. He further noted that they provided all information as requested as well as updated the Larson declaration for the Commission's consideration.

Chris Locke, attorney, representing San Rafael Rock Quarry, believed that 15 employees is more than reasonable, the job descriptions are before the Commission as requested, and for an operation of this size, 15 employees with the two buildings is more than reasonably justified. He stated that it is well within the limits of a reasonable expansion and this would provide greater public benefit by allowing the administrative functions consolidated in one location.

Commissioner Greenberg asked Mr. Locke the following: 1) if there is currently a residential manager; 2) information about the number of Quarry workers in 1982; and 3) the number of administrative workers in 1982. Mr. Locke responded that there is a Quarry Manager who did not live on the site presently. Also, the quarry positions in 1982 are unknown. He pointed out that the Court order provides a limit of 250 truck trips per day and the Quarry is in compliance with the number of truck trips.

Mr. Giacomini stated that if they receive what they requested in regard to the two buildings, they could get out of the other four buildings faster and abide by the six-month requirement.

Commissioner Dickenson clarified that the baseline topographic map is dated January 1982. Principal Planner Lai responded in the affirmative. Staff then provided the Commission with a site plan from March of 1983 showing the two other residences, Lucas and Stephenson, and in that site plan it shows the existence of the Larson residence.

Bill Hosken, Marin Bay Park resident, supported staff's recommendation to retain the 3,738 square feet of office space, which is approving the one building with the conversion of the other back to a residence.

Lee Markrack, Marin Bay Park resident, recommended that the Commission accept 1,100 square feet as presented by staff originally.

Joe Caramucci, San Rafael resident, provided a packet to the Commission for their consideration and recommended that the Commission make a final determination on this matter.

Jan Brice, Marin Bay Park resident, supported staff's original recommendation of 1,100 square feet. She felt very uncomfortable as a member of the public to watch an individual manipulate the Commission and the public, and she has yet to hear how 15,000 square feet of buildings built illegally could be made legal.

Joe Isotalo, San Rafael resident, stated that these 15 employees and the amount of space desired is not needed. He further recommended that the Commission move forward and noted his support for staff's recommendation that was presented today.

The public hearing was closed.

County Counsel Zaltsman pointed out that the Commission has the ability to review whether the space desired is needed in regard to the Hansen court case.

Commissioner Holland stated that in his view this is a square footage issue, and it is not appropriate for the Commission to review job descriptions or attempt to determine staffing needs.

Agency Director Hinds noted that staff recommended retaining the larger office because it was reasonably close to what was present. Also, staff believed allowing the one office is a reasonable approach.

Commissioner Julin asked staff if 3,738 square feet is enough space. County Counsel Zaltsman responded that they are entitled to what they had in 1982 and they must prove that the increased mining operation necessitates the increased space.

Commissioner Barner asked staff if those activities constitute increased activity. Agency Director Hinds responded that it was not always increased extraction rates; it was also a need for more updated equipment and better environmental mitigation and safety. Staff stated that a reasonable expansion for today's operation is legitimate and it did not have to be correlated to the amount of gravel extracted.

Commissioner Barner stated that 3,738 square feet divided by 15 employees equals about 250 square feet of office space per employee. He believed, due to technology, more space is needed. Principal Planner Lai responded that there is no standard or guidelines for office space per employee.

Commissioner Thompson asked staff the intended purpose of converting the 1,900-square-foot building back into a residence when no residential manager is on-site today. Principal Planner Lai responded that it was an option for the Commission to consider.

Commissioner Dickenson stated that the Hansen decision makes this more complicated because they must review what is a reasonable use. He pointed out that the uses have changed and believed they must respect the Hansen decision as well as the fact that they are all illegal buildings. He then proposed that the Commission only approve the main office building with the following modifications made to the Findings:

- Section II: Action – Item 1 – change “45 days” to “90 days.”
- Section II: Action - Item 2 shall be deleted.
- Section II: Action - Item 3 would become Item 2 and be modified to state, “*The applicant shall submit an application for an up-to-code sewage disposal system to the Environmental Health Services Divisions to serve the 3,738-square-foot building. The new system shall be installed and inspected prior to the Final Inspections for the Building Permit.*”
- Section II: Action - Item 4 would become Item 3 and be modified to state, “*The applicant shall vacate the five other office buildings totaling 10,913 square feet within 90 days from the date of*

this decision and obtain an inspection from the Community Development Agency staff verifying compliance with this requirement and remove all five buildings, including the Larson trailer, within six months of the date of this decision.”

- *Section II: Action – Add new Item 4 to state, “Any extension to the above deadlines would have to be approved by the Planning Commission.”*

Commissioner Julin concurred with Commissioner Dickenson’s modifications.

Commissioner Holland supported staff’s recommendation as presented.

Chairman Berland asked for a motion.

M/s, Dickenson/Julin, to approve retention of only the main office building as previously described by Commissioner Dickenson.

Commissioner Thompson believed a six-month timeframe to vacate the buildings is more appropriate.

Commissioner Barner desired a provision that the applicant could request administrative extensions. Principal Planner Lai responded that there is the ability to grant an extension if additional time is needed. Staff noted that any request could not be made administratively and they must come back before the Commission. Commissioner Dickenson would only support requiring that any extension request be approved by the Commission.

Commissioner Greenberg opposed converting the second building to a residence because the current manager did not live on-site and, if the building is allowed to remain, she recommended limiting the Quarry to 15 administrative workers. She stated that if the majority of the Commission did not desire the two buildings, she recommended one building rather than a conversion. Also, she agreed with a six-month timeframe and recommended a significant per day fine for every day the buildings remain on-site after that point.

Chairman Berland noted that the applicant has the burden to establish that “x” number of employees are needed for this operation. He believed 7 or 8 of the 15 employees are not required to operate the Quarry, and the remaining 7 or 8 employees could occupy the 1,967 square foot structure, but would agree with the motion.

Agency Director Hinds noted that there is an added penalty fee, which is part of the fee ordinance for legalization of work that was initially completed without permit. In addition, if there are code violations there is a different hearing body that would establish additional fines. He noted that it is not the Commission’s responsibility to set the fine.

Commissioner Thompson accepted the motion in form, but recommended changing the dates to 45 days for the first item and a 180-day time period with a recommendation that the code enforcement hearing officer impose fines if this is not achieved.

Commissioner Dickenson and Commissioner Julin did not accept the amendments.

Motion passed 5:2 (Vice Chair Thompson and Commissioner Greenberg opposed).

Chairman Berland adjourned the Planning Commission meeting at 6:20 p.m.

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. PC 04-015

A RESOLUTION APPROVING THE CONTINUED USE OF ONE OFFICE BUILDING FOR THE SAN RAFAEL ROCK QUARRY

1000 POINT SAN PEDRO ROAD, SAN RAFAEL ASSESSOR'S PARCELS 184-010-09, -15, -16, -52

SECTION I: FINDINGS

- I. WHEREAS the San Rafael Rock Quarry has submitted a request to retain two office buildings, totaling 5,705 square feet, that would be used in support of the ongoing quarry operations at its facility located at 1000 Point San Pedro Road, San Rafael, on property that is further identified as Assessor's Parcels 184-010-09, -15, -16, -52. The primary quarry use of the property became a legal non-conforming use when the zoning of the property was amended on November 9, 1982 from a M-2 (Heavy Industrial District) and A-2:B-2 (Limited Agricultural District) to a BFC-RMPC (Bayfront Conservation, Residential Multiple Planned Commercial District) and a RMPC (Residential Multiple Planned Commercial District). In conjunction with the request, the applicant submitted the following documentation: (1) a declaration from a prior quarry manager, Marvin Larson, who indicated that in 1982, there were a total of four buildings (including the main office, Larson residence/office, quality control office, and barge office) with an estimated total floor area of 5,050 square feet that were used for administrative offices; (2) a declaration from a photogrammetrist, Peter Ashley, who indicated that three of the four office buildings that were depicted in the 1982 aerial photograph of the property (including the Larson residence/office, quality control office, and barge office) had an estimated floor area of 3,170 square feet; (3) copies of aerial photographs of the property that were taken in May 1982 by Pacific Aerial Surveys; and (4) job descriptions for the 15 administrative positions that would remain as part of the quarrying operation. The applicant indicates that application of the diminishing asset doctrine for the overall quarry use would support a finding that the two office buildings proposed to remain on the site represent a reasonable expansion of an administrative office use that is incidental and auxiliary to the primary legal non-conforming quarry use.
II. WHEREAS the Marin County Planning Commission held a duly-noticed public hearing on September 27, 2004, to consider the merits of the project, and hear testimony in favor of, and in opposition to, the request.
III. WHEREAS the Marin County Planning Commission finds that that there is sufficient evidence to support the presence of the 1,000 square foot main office. Utilizing the prior manager's declaration about the presence of the quality control and barge offices, in combination with the more precise floor area estimate from the photogrammetrist, yields an additional 1,390 square feet of floor area, bringing the total office space to 2,390 square feet. However, full credit cannot be given to the Larson structure for office use since its primary use was that as the residence for the prior quarry manager. No records of Building Permits exist for any of the four structures that are identified in the declarations that were submitted by the applicant.
IV. WHERAS the Marin County Planning Commission finds that the diminishing asset doctrine is applicable in determining the extent of offices that could be supported in conjunction with a legal non-conforming quarry use. The diminishing asset doctrine states that the very nature of certain uses, such as a mining operation, is the continuing use of the land for purposes of depleting the resource. The progression of quarrying activities into other areas of the property does not constitute an expansion or change of location with respect to the

nonconforming quarry use. In the Hansen case (*Hansen Brothers Enterprises, Inc. v. Board of Supervisors* (1996) 12 Cal. 4th 533), the State Supreme Court found that the nonconforming mining use includes all aspects of the operation that were integral parts of the business at the time the use became nonconforming, including those uses that are normally incidental and ancillary to the primary nonconforming use. Based on this, any increase in incidental and auxiliary uses, including offices, would be allowed under the Hansen case to the extent the owner can prove that they are integrally related to the objectively manifested increased quarrying use.

- V. WHEREAS the Marin County Planning Commission finds that there is sufficient basis to support a reasonable, limited expansion to the administrative office space given consideration to the legal determinations that were issued in connection with the Hansen case. On balance, taking into account the lack of accurate County records (including Building Permits) for the office structures that are cited in the personal declarations, and the previous residential use of the Larson structure, the Commission supports the proposed use of the 3,738 square foot structure for office use. This would represent an increase of 1,348 square feet over the 2,390 square feet of office space that could be credited for office use based on the factors discussed previously.

SECTION II: ACTION

NOW, THEREFORE BE IT RESOLVED that the Marin County Planning Commission approves the continued use of the 3,738 square foot office building by up to 15 administrative employees in conjunction with the quarry operations that are undertaken by the San Rafael Rock Quarry in its facility that is located at 1000 Point San Pedro Road, San Rafael on Assessor's Parcels 184-01-09, -15, -16, and -52.

NOW, THEREFORE BE IT FURTHER RESOLVED that this determination is based on the applicant's compliance with the following requirements.

1. The applicant shall submit a Building Permit application and obtain final inspections from the Building and Safety Division for the 3,738 square foot office building within 45 days from the date of this decision.
2. The applicant shall submit an application for an up-to-code sewage disposal system to the Environmental Health Services Division to serve the 3,738 square foot office building. The new system shall be installed and inspected prior to Final Inspections for the Building Permit.
3. The applicant shall vacate the five other office buildings totaling 10,913 square feet within 90 days from the date of this decision and obtain an inspection from the Community Development Agency staff verifying compliance with this requirement and remove all five buildings, including the Larson trailer, within six months of the date of this decision.
4. Any extension to the above deadlines would have to be approved by the Planning Commission.

SECTION III: APPEAL

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 \$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 October 7, 2004.**

IV: VOTE

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin, State of California, on the 27th day of September, 2004, by the following vote to wit (5/2):

AYES: Dickenson, Berland, Holland, Barner, Julin

NOES: Greenberg, Thompson

ABSENT: None

ALLAN BERLAND, CHAIRMAN
MARIN COUNTY PLANNING COMMISSION

Attest:

Jessica Woods
Recording Secretary