

MARIN COUNTY PLANNING COMMISSION HEARING MINUTES
November 29, 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: Brian Crawford, Deputy Director of Planning Services
Ben Berto, Principal Planner
Jeremy Tejirian, Planner
Eric Steger, Department of Public Works, Senior Engineer
Jessica Woods, Recording Secretary

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

Convened at 1:00 p.m.
Adjourned at 4:27 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 Dickenson and Commissioner Julin absent).

- b. Continuances – Applicant requested a continuance of Item 6 to a future meeting.
- c. Approval of Minutes – None

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

2. COMMUNICATIONS

The Commission acknowledged several pieces of correspondence for their review.

3. DIRECTOR'S ORAL REPORT

- a. Update on Board of Supervisors Actions

December 7, 2004: Smith Appeal of Armstrong Garden Center Design Review and Use Permit applications; Lamar Design Review Appeal

December 14, 2004: San Pedro Court EIR

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

January 2005 – Lawson's Landing Draft EIR; Lawson's Landing Sand Quarry Enforcement Action;
Redwood Sanitary Landfill Solid Waste Facilities Permit Final EIR

Work in Progress – Joint EIR/EIS Big Lagoon Creek Restoration Project; Cascade Canyon Open Space Final EIR; San Rafael Rock Quarry EIR; Marin Horizon School Use Permit and Design Review Initial Study; Bedford Road Storage Facility Expanded Initial Study

Brian Crawford, Deputy Director, discussed Assembly Bill 2702 regarding State preemptions in the area of local control over second units. Staff explained that the new legislation imposes some additional preemptions on local control over regulating second units. Staff pointed out that there is a prohibition on imposing a deed restriction requirement or other limitation that requires owner occupancy of a second unit property beyond the original permit recipient/owner. The new law also prohibits local agencies from requiring minimum lot areas for second unit projects that exceed twice the size of the primary unit on the same property, unless requested by the owner. Local agencies may also not require second units below 550 square feet of floor area, unless requested by the owner. Staff intends to prepare revisions to the second unit standards in the Development Code to reflect these recent legislative changes. The revisions would follow the technical corrections and minor editorial revisions that staff is currently completing for the Commission's review in February 2005.

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

Eva Karlen, Mill Valley resident, invited the Commission to a Town Hall meeting on Global Warming and Climate issues located at the Mill Valley Community Center on Friday, December 3rd, 2004 between 7:00 and 9:00 p.m. She then provided the Commission with a flyer for their consideration.

5. FUTURE AGENDA DISCUSSION ITEMS, FIELD TRIPS

Update on Planning Commission Actions:

December 6, 2004 Special Meeting

- Oakview Master Plan: *Public hearing to consider recommended action for Master Plan proposing 28 single-family residential lots and a 94,000 square foot assisted living facility (Marinwood/Northwest of Highway 101/Lucas Valley Road interchange).*

December 13, 2004

- Moritz Coastal Permit, Use Permit, Design Review: *Continued hearing from August 23, 2004 for new single-family residence and legalization of guesthouse and agricultural worker housing (Bolinah/Horseshoe Hill Road).*
- Gobar Design Review: *Continued hearing from September 13, 2004 to consider design modifications for an expansion and remodel of a single-family residence (San Rafael/Unionstone Drive).*

6. APPEAL (BENTLY) OF VARIANCE/COASTAL PERMIT/DESIGN REVIEW/SECOND UNIT PERMIT APPLICATIONS: GRAY (NEO)

Public hearing to consider an appeal filed by Christopher Bently of the Gray proposal to demolish a single-family residence, garage, pool, spa, and septic system, and to construct a 3,373 square foot single-family residence with two detached accessory buildings for a 1,283 square foot garage/second unit/pool equipment room, and a 319 square foot gym/bicycle storage room. The proposal would result in buildings with a combined area of 4,975 square feet. The maximum height of the residence would be 34.5 feet NGVD, and the maximum height of the accessory building would be 20.6 feet NGVD. The height of the single-family residence would exceed the 31.14 feet NGVD height standard in the zoning code. The project would include installation of a new septic system with a sand filter, and a new propane tank. The subject property is located at **172 Seadrift Road, Stinson Beach**, and is further identified as **Assessor's Parcel 195-031-13**.

(This item is being recommended for continuance to an unspecified date to allow staff, the appellant and applicant to pursue finalizing a resolution of the appeal through project modifications proposed by the applicant at the appellant's request subsequent to distribution of the public notice for the appeal hearing).

Chairman Berland expressed concern because the proposal is to build approximately 5,000 square feet of improvements and he believed this Commission should be involved in this proposed application rather than having it handled administratively. He further recommended that this matter be brought before the Commission to consider the design review proposal.

Commissioner Dickenson pointed out that the Commission has no jurisdiction. Deputy Director Crawford responded that the project has been approved at a Deputy Zoning Administrator (DZA) level and then the adjoining property owner appealed that decision. Staff added that the Hearing Officer did impose some conditions regarding the design of the proposed residence in response to concerns that had been made by the adjacent property owner. Nonetheless, the adjacent property owner filed an appeal following the DZA's conditional approval and the appellant and applicant are in the process of resolving that appeal through some additional design changes that would be reviewed either as a new permit request or as a substantial conformance determination for the project approved by the DZA. Staff further noted that if the majority of the Commission desired to review this project, staff must review the procedural issues of how the appeal, which is still outstanding subject to this resolution being completed, relates to the reauthorization of a revised project.

Chairman Berland noted that to his knowledge there would be a revised proposal presented to staff in which staff could approve or not approve, and at that point he asked staff to forward the matter to the Commission for review, if possible.

Commissioner Barner recommended revising the standards in terms of how they review renovation or new construction. Deputy Director Crawford agreed that it would be a good idea to revisit the height limitations for the Seadrift Subdivision to eliminate the need for a variance simply for the purpose of meeting mandatory FEMA flood control standards.

Commissioner Holland stated that given where this application is in the process and what is at issue currently is landscaping matters, he would not be in favor of bringing the matter to the Commission at this point and he believed it would be unfair to the applicant at this point.

Commissioner Dickenson pointed out that the issues that prompted the appeal had nothing to do with the size or height and agreed with Commissioner Holland's comments.

Chairman Berland reiterated his desire to review the matter and make a determination whether this project should be approved or approved with conditions. Deputy Director Crawford agreed to investigate the matter in more detail in terms of the Commission's jurisdiction.

Chairman Berland asked for a motion.

M/s, Holland/Greenberg, and passed unanimously of those present, to continue the Bently Appeal to an unspecified date. Motion passed 6/0 (Commissioner Julin absent).

7A. DRAFT NEGATIVE DECLARATION OF ENVIRONMENTAL IMPACT: ANTONIOLI

7B. LOT LINE ADJUSTMENT AND PRECISE DEVELOPMENT PLAN: ANTONIOLI (JT)

Continued public hearing to consider the Antonioli proposal to reconfigure four of the five existing contiguous lots, which comprise the Lands of Antonioli, in order to create two building sites adjacent to Crest Road in Novato. The property is currently developed with a single-family residence and accessory structures that would remain on a fifth lot. The plans show building envelopes for each lot, but detailed information is only provided for Lots 4 and 7 because these are contemplated for development in the near future. The reconfiguration would result in lots that range in size from 1.01 acres to 10.32 acres. The residence proposed for Lot 4 would take access from the driveway leading from Crest Road to the existing residence, and the residence proposed for Lot 7 would take access directly from Crest Road. The building envelopes for the proposed residences are approximately five thousand square feet each, and both residences would be developed with on-site septic systems outside the building envelopes. The proposed project would include offering a 5-foot wide strip of land adjacent to Crest Road for dedication to the County, and encumbering 6 acres of land with open space easements that would protect these areas from future development in perpetuity. The existing and proposed lot areas are summarized in the table below, along with the coverage percentage of the proposed building envelopes in comparison to the areas of their lots. (The lot numbers in this description conform to the lot numbers that appear in the Title Report for the subject property.) The Antonioli Lot Line Adjustment and Precise Development Plan site is located at **235 Crest Road in Novato**, and is further identified as **Assessor's Parcels 143-370-02, -03, -06, -07, -38, and 143-183-01**.

Prior to taking action for approval of the Antonioli Project the Marin County Planning Commission will consider the adoption of a Negative Declaration of Environmental Impact for the project.

(This item was continued from the hearings of August 9, 2004 and September 13, 2004.)

Jeremy Tejirian, Planner, summarized the staff report and recommended that the Commission adopt the revised Resolutions approving a Mitigated Negative Declaration for the project and conditionally approving the Antonioli Lot Line Adjustment and Precise Development Plan.

Planner Tejirian noted the following revised conditions for the Commission's consideration:

- Maximum building height for residences near Crest Road at 18 feet above road or driveway grade
- Fence not to exceed elevation of road or driveway grade, and be open fencing outside of the development envelopes
- Materials for future development shall be earthtone colors

In response to Commissioner Thompson's question regarding fencing, Mr. Tejirian responded that if individuals desired fencing, the fencing would be limited due to the conservation easement.

Commissioner Dickenson discussed the reconfiguration of old Parcel 7 and clarified with staff that because of PG&E's past ownership and then disposition of the property, a legal parcel was created, but it is not a building site because it is entirely encumbered by easements. Planner Tejirian responded in the affirmative.

Commissioner Dickenson pointed out that his recollection is that both existing lots in the rear portion of the property was hidden and now the building sites are highly visible from Crest Road and asked staff how that is consistent with the findings. Planner Tejirian responded that this project removes any future potential for a subdivision and places a substantial amount of the property in conservation areas in perpetuity, which are substantial benefits for the entire project. He further noted that there are tradeoffs for this project, and the opportunity to preserve the watercourse and oak woodlands, in addition to extinguishing subdivision potential are the main factors supporting the recommendation.

Commissioner Barner discussed fencing and believed fencing is a barrier to wildlife movement and while there is a provision for open type fences that would protect views, those fences could serve as a barrier to established wildlife

corridors. He further added that by restricting the fencing to the building envelope, that problem could be eliminated.

Commissioner Holland clarified with staff that they are restricting the design to prohibit solid fences, so a solid fence could only be placed around a building envelope. Planner Tejirian responded in the affirmative. Deputy Director Crawford recommended examining the possibility of requiring wildlife-friendly fencing that would allow sufficient amount of space for the movement of wildlife.

In response to Commissioner Holland's comments related to the gate desired by the Novato Fire District, Planner Tejirian responded that the Fire Department desired to be able to travel into the large open space area at some future time.

The hearing was opened to the public.

Georgia McDaniel, applicant/representing CSW, believed staff addressed all the issues and hoped the Commission finds the project acceptable.

The public hearing was closed.

Commissioner Thompson reiterated his concern about wildlife corridors. He believed within a building envelope, fencing should be allowed, but outside the building envelope there should either be a fence along the line of a set aside area to keep the wildlife protected from the animals that are domesticated by the new occupants or they should be prohibited from installing fencing outside the building envelopes.

Commissioner Holland expressed concern for "mesh" fencing around all four developable lots and believed there are capabilities for fences that are very tall as long as they do not exceed the elevation of the adjacent driveway or road grade. He recommended stating that fencing outside building envelopes be limited to the lesser of the road grade or a certain number of feet. He desired the fencing to be wire strand rather than wire mesh. He then expressed concern for the heights of the houses. He further preferred to deal with the height of buildings on Parcels 1 and 2 during design review, but if Lots 1 and 2 are to be limited at this time to 18 feet, then Lots 4 and 7 should be limited to 18 feet as well regardless of the road grade.

Ms. McDaniel pointed out that the story poles reflect the total height, which is 18 feet above either Crest Road or the driveway, so in cases where it is a down slope they would be taller than 18 feet in height, but not above 18 feet above the road or driveway.

Commissioner Dickenson questioned the intent of this proposal. He did not view any particular visual or environmental reasons to justify moving the homes off of the back sites out on to what he believed is a highly visible part of the property. Also, at most, he could envision one home site on two-acres out on Crest Road rather than clustering development on half the minimum density. He further added that he is not prepared to support this application and he could not make the required findings as follows:

- *Finding V.B – The lots reconfigured by the project include designated building envelopes that would minimize adverse environmental and visual affects to the surrounding areas.*
- *Finding VII.D – The project would preserve unique natural site amenities including the hillsides, the watercourse, stands of significant trees, and other natural features that are distinguishing characteristics of the surrounding area. The visibility of new development would be minimized by using existing natural site characteristics for screening such as trees and topographic features. Further, the development would not reach a height or be located in a position that would result in impeding the primary views enjoyed from surrounding residences.*

Commissioner Greenberg agreed with Commissioner Dickenson's comments. She also added that the pattern of development proposed is not consistent with the neighborhood or what the County desired. She further believed the reconfiguration would only serve the property owners.

In response to Commissioner Holland's questions about using lot line adjustment to move lots to entirely new locations, Deputy Director Crawford responded that there is nothing under State law that limits the degree to which parcels could be reconfigured under lot line adjustment applications. Staff explained that the State subdivision law was revised 2-3 years ago to expand the breadth of review by allowing local agencies to apply general plan and community plan policies to lot line adjustment proposals. Staff also noted that the lot line adjustment request is being made in conjunction with a Precise Development Plan that addresses the subdivision design with respect to planned district development standards such as clustering, visual effects, grading, and tree removal. Staff further noted that based upon State and local subdivision regulations, as well as the Precise Development Plan, the Commission has the discretion to decide whether or not this particular lot design is superior to the existing lot configuration or some other alternative lot design.

Chairman Berland pointed out that Finding V.B discussed building envelopes that would minimize adverse environmental and visual affects and he asked staff if that is a required finding; or is it only applied to the building envelopes with respect to the lot; or must a finding be made that the lot as reconfigured minimizes the adverse environmental and visual affects. Planner Tejirian responded that the required finding has to do with the lots.

Commissioner Barner shared Commissioner Dickenson's concerns. He agreed that preservation of conservation areas is very important and should be conserved, but he had real reservations about the price to pay in terms of increased visibility of development in close proximity to Crest Road.

Commissioner Holland expressed concern for Lot 7 and suggested eliminating Lot 7. Alternatively, he recommended adding a condition of approval that any design review for Lot 7 must come before the Commission due to its proximity to Crest Road.

Commissioner Thompson discussed height and thought the example being used was the building that came before the Commission at Stinson Beach where the entire house was within an 18-foot height limit, which was done particularly well in his view. He further believed the height limit should be modified to 18 feet.

Commissioner Greenberg believed the fencing should be limited to the building envelopes. Also, the fence height must be discussed in more detail because very high fencing is not appropriate. She believed the condition in regard to the fire access road is very casual and should be placed at an appropriate location with Fire Department review and approval. She also desired the applicant to propose a house size maximum. She then discussed Conditions 39 and 40 on page 10 of the Resolution in regard to replacing trees and mitigation trees and clarified with staff that replacement of existing trees that were removed would be 5 gallon and the 2:1 mitigation trees could be seedlings. Staff responded in the affirmative. Commissioner Greenberg further noted that she could not support the reconfigured lots and objected to the increase in density.

Commissioner Dickenson agreed with Commissioner Holland's comments that Lot 7 is the most objectionable. The home would be very imposing on Crest Road.

Chairman Berland believed this is a reasonable development proposal that would provide some advantages of restricting development. Also, he felt it is unreasonable to restrict the lots to the back of the property when other lots in the area are not restricted in that manner. Also, since Finding 5B is a required finding, he cannot make that finding with respect to Lot 7 and he hoped the applicant could come back with a proposal to reconfigure the lots as suggested by Commissioner Holland and perhaps combine Lots 4 and 7 using the Lot 4 building envelope.

Ms. McDaniel indicated that applicant desired to work with the staff to review another alternative. She added that when the application was originally submitted it was for a subdivision, not a Lot Line Adjustment and in

discussions with staff, they requested a Lot Line Adjustment. Secondly, when the first plans were submitted the building envelope for Lot 7 was down lower, not against the roadway, but a decision was made that the wildlife was more important, so they reconfigured the lot in order to bring the building envelope up out of the area where the conservation easement would be located. Finally, with the conservation easement that is located on the other side where the existing lots are located, they desired a conservation easement because it is an entrance to another wildlife corridor, so they are maintaining the movement for wildlife throughout that area over time by moving those lots up closer rather than leaving them in their existing location. She further agreed to a continuance on this matter in order to address the concerns.

Deputy Director Crawford clarified with the Commission their direction that Lot 7, as it is currently proposed, would not be favorably looked upon, so Lot 7 must either be eliminated or relocated on the property in order to significantly minimize its visibility over the current location or avoid visual impacts. The Commission responded in the affirmative.

Ms. McDaniel asked the Commission what is more important, wildlife or humans in order to know whether to focus on providing for wildlife in perpetuity or whether the visual concerns of humans is more important because at times those conflict. Commissioner Greenberg and Commissioner Thompson recommended striving to remove the conflict. Commissioner Dickenson believed there is a solution that could reasonably accommodate both concerns. Commissioner Holland desired the conservation areas be preserved.

Commissioner Barner asked staff why a decision was made for a Lot Line Adjustment rather than a subdivision. Planner Tejirian responded that the property currently consists of 5 legal lots of record and it would be hard to move all of those lots around, and creating any more lots on the property would not be appropriate in light of the environmental constraints that exist on the property.

Chairman Berland asked for a motion.

M/s, Holland/Barner, and passed unanimously of those present, to continue the hearing to an unspecified date at the applicant's request to allow the applicant to respond to the issues that were raised by the Commissioners during their discussion. Motion passed 6/0 (Commissioner Julin absent).

Chairman Berland announced at 3:33 p.m. that the Commission would take a short recess and then reconvene with the last agenda item.

8. APPEAL (VERMEF) OF DESIGN REVIEW CLEARANCE: TIPPING (PROAPS)
9. APPEAL (VERMEF) OF DESIGN REVIEW CLEARANCE: TONG (CH/GM)

Public hearing to consider the appeals filed by Paul Vermeff of the Community Development Agency's approval of the Tipping (Proaps) and Tong Design Review Clearance applications. The applications include the as-built construction of a 7-foot, 4-inch tall redwood fence at 42 Calypso Shores and an approximately 8-foot, 2-inch tall redwood fence at 32 Calypso Shores in Novato. The appellant sets forth the following bases of appeal for both proposals: 1) the fences interfere with views enjoyed from the appellant's property therefore impacting the peaceful enjoyment of his property; and 2) the fences are not consistent with the Covenants, Conditions, and Restrictions established by the Keys Landing Homeowners Association. The subject properties are located at **42 and 32 Calypso Shores, Novato**, and is further identified as **Assessor's Parcels 157-310-41 (42 Calypso Shores) and 157-321-01 (32 Calypso Shores)**.

Note: Items 8 and 9 are for two appeals filed by a single appellant (Vermeff) objecting to the Community Development Agency's approval of Design Review Clearance applications for two fences on two adjoining lots under separate ownership by Proaps (formerly Tipping) and Tong. Because both appeals are based on the same objections for the same types of structures, the Planning Commission conducted simultaneous public hearings for both appeals.

Curtis Havel, Planner, summarized the staff report and recommended that the Commission review the administrative record; conduct a public hearing, and move to adopt the attached Resolutions: 1) denying the Vermeff Appeal; and 2) sustaining the Community Development Agency's approvals of the Tipping and Tong Design Review Clearance applications.

Commissioner Dickenson clarified with staff that only the Tong's property is part of the Keys Landing Homeowners Association. Planner Havel responded in the affirmative.

The hearing was opened to the public on the appeal of the Tipping (Proaps) project.

Ellen Brandt, attorney/representing Paul Vermeff, announced that her client received very late notice on this matter. She also pointed out that the Tipping fence is not in keeping with the CC&R's, flow and style of the entire development. She further did not understand the need for a 7-foot fence in the middle of the yard and believed it is a nuisance mentality, which is very upsetting to her client.

Verna Eisen, owner, 42 Calypso Shores, Novato, desired the one level home and view. She further pointed out that the fence is a privacy screen from her back bedroom. Also, the fence is consistent with the surrounding homes in the neighborhood.

Commissioner Dickenson asked staff if there is anything that would prohibit the property owner from building a room where the screening is located. Planner Havel responded that the property owner could conceivably construct a residential addition on to that house, which would be subject to Design Review.

Commissioner Holland asked Ms. Eisen if the fence in question was installed prior to her purchasing the property. Ms. Eisen responded in the affirmative.

Curt Proaps, owner, 42 Calypso Shores, Novato, pointed out that when purchasing the property the deck and the fence were present. He also pointed out that as a real estate agent, 98% of the homes in Bel Marin Keys have fencing between the properties or shrubbery for privacy. He further reiterated that he purchased the home with the fence and did not believe there is any reason to remove the fence.

Ms. Brandt reiterated that the fence violates the CC&R's and believed some compromise is needed in order to resolve this issue such as modifying the fence by lowering it to the legal limit and bringing it back by three feet in order to comply with the setback.

The public hearing was closed.

Commissioner Barner stated that he was very surprised to view the close proximity of these two homes during his site visit. He believed the fence is a benefit to Mr. Vermeff as well as the property owner in order to provide privacy. He further agreed with staff's recommendation.

Commissioner Holland agreed with Commissioner Barner's comments and would support staff's recommendation. Commissioner Dickenson concurred.

Chairman Berland asked for a motion.

M/s, Greenberg/Holland, to approve the Resolution provided by staff to deny the appeal and uphold the approval of the Tipping Design Review Clearance as set out in the Resolution recommended by staff. Motion passed 5:1 (Commissioner Thompson opposed and Commissioner Julin absent).

The hearing was opened to the public on the appeal of the Tong project.

Ellen Brandt, attorney/representing Paul Vermeff, opposed the Tong fence and pointed out that the fence is in excess of the code and requested that they be held to the code limit. She further requested that the fence height be brought back down.

Commissioner Barner asked Ms. Brandt when the fence fell down. Ms. Brandt responded that it was about four years ago. Commissioner Barner pointed out that Keys Landing Homeowners Association letter indicated that the fence is appropriate and very attractive.

Commissioner Dickenson noted that the Keys Landing Homeowners Association supports the fence and found the fence consistent with the CC&R's. He further added that the CC&R's are not relevant for the Commission's discussion, but the Commission would consider the legal height of the fence.

Judy Johnson, owner, 32 Calypso Shores, Novato, pointed out that when they purchased the property the fence was at its current height, and due to the storm the fence fell down, so they erected another fence, which has no impact to the watershed or viewshed. She further pointed out that there is only a small bathroom window on that side of Mr. Vermeff's property and she did not believe it would be a significant impact.

Ms. Brandt pointed out that Mr. Vermeff's entrance is on the south side, which views the Tong's fence, so Mr. Vermeff is impacted by the Tong's fence.

The public hearing was closed.

Commissioner Barner did not view the interference and felt the privacy is increased to both the Tong and the Vermeff residences. Also, the viewshed is not impacted, so he would support staff's recommendation to deny the appeal.

Commissioner Thompson believed 6 feet is a reasonable height for a fence and as a result he would not support staff's recommendation.

Chairman Berland asked for a motion.

M/s, Dickenson/Greenberg, to deny the appeal and uphold the approval of the Tong Design Review Clearance as set out in the Resolution recommended by staff. Motion passed 5/1 (Commissioner Thompson opposed and Commissioner Julin absent).

Chairman Berland adjourned the Planning Commission meeting at 4:27 p.m.

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. PC 04-018

**A RESOLUTION DENYING THE VERMEF APPEAL AND SUSTAINING THE
COMMUNITY DEVELOPMENT AGENCY'S APPROVAL OF
THE TIPPING DESIGN REVIEW CLEARANCE 05-19
42 CALYPSO SHORES, NOVATO
ASSESSOR'S PARCEL 157-310-41**

SECTION I: FINDINGS

- I. WHEREAS Richard and Patricia Tipping are requesting Design Review Clearance approval for the as-built construction of a detached deck and an existing redwood fence. The plans submitted by the former property owner (Tipping) describe a 6-foot tall fence. However, during the routine site visit conducted by staff, it was discovered that the fence actually reaches a height of approximately 7 feet, 4 inches. The fence and deck are located along the northeasterly rear portion of the residence. The 352 square foot deck has a maximum height of approximately 19 inches above grade, is partially bordered by the redwood fence along the northeasterly portion of the deck, and opens up to the northwest. The subject property is located at 42 Calypso Shores, Novato and is further identified as Assessor's Parcel 157-310-41.
- II. WHEREAS on September 15, 2004, the Community Development Agency issued an approval of the Tipping Design Review Clearance granting authorization for the construction of a 7-foot, 4-inch tall redwood fence.
- III. WHEREAS, a timely appeal of the Community Development Agency's approval of the Tipping Design Review has been filed by Paul Vermeff asserting the following issues: 1) the fence would obstruct views enjoyed from the appellant's property and therefore interferes with the appellant's peaceful enjoyment of the property; and 2) the project would be inconsistent with the Covenants, Conditions, and Restrictions (CC&R's) of the Keys Landing Homeowners Association.
- IV. WHEREAS the Marin County Planning Commission held a duly noticed public hearing on November 29, 2004, to consider the merits of the project and appeal, and hear testimony in favor of, and in opposition to, the project.
- V. WHEREAS the Marin County Planning Commission finds that this project is Categorically Exempt from the requirements of the California Environmental Quality (CEQA) Act pursuant to Section 15303, Class 3 of the CEQA Guidelines because it entails construction of accessory structures reasonably related to the residential use of the property with no potentially significant impacts on the environment.
- VI. WHEREAS the Marin County Planning Commission finds that the proposed project is consistent with the Marin Countywide Plan for the following reasons:
 - A. The construction of a fence and deck would be consistent with the SF6 (Single Family, 4 to 7 units per acre) land use designation;
 - B. The project would be consistent with the prevailing community character and is incidental to the primary residential land use of the property;
 - C. The project would not cause significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation, or other services; and,

D. The project would not result in tree removal or grading.

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

- 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 fence and deck will be situated solely on the subject property and will result in a structure of height, mass and bulk proportionate to the 8,500 square foot site. The fence and deck are improvements commonly associated with residential development and would be consistent with development patterns elsewhere in the neighborhood. The fence and deck will incorporate building forms that are commonly used in fence and deck construction and utilize materials and colors that are consistent with the surrounding natural and built environments.

- 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 project will not impact view, light, air, and privacy of surrounding residences or public areas due to the following reasons: (1) the fence and deck would not substantially obstruct views of the Novato Creek from adjacent properties; and (2) the fence would provide a greater degree of privacy in the rear yards for residents of the subject and adjacent properties.

- 3. It will not directly, or cumulative, impair, inhibit, or limit further investment or improvements in the vicinity, on the same or other properties, including public lands and rights-of-way.**

The discussion contained in Findings VII (1) and (2) above are supportive of this finding.

- 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 project does not entail the removal of any trees, and no landscaping has been proposed.

- 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 fence and deck are attractively designed and would be compatible with that of other structures in the vicinity and consistent with the residential use of the property, would respect the surrounding natural environment because no vegetation removal is proposed, and would not diminish views from surrounding properties because the fence would not obstruct adjacent properties views of the Novato Creek to the northeast. The project will not encroach onto adjoining private properties, public lands, or private and public easements and rights-of-way. As discussed in Findings VII (1) and (2) above, the proposal will 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 will result.

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

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

The fence and deck are modest in scope and are reasonably related to the residential development of the property. As discussed in Findings VII (1) and (2) above, the project would preserve views and privacy enjoyed by adjacent properties, and would result in development that is consistent with the development patterns of the community. The overall scale of the project is compatible with other development in the area and is appropriate given the size and configuration of the property.

b. Drainage systems and appurtenant structures;

The project would not affect site drainage.

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

The project would not result in the reforming of the natural terrain and would not require any 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 development on the property will not interfere with the containment, movement, or circulation of animals, conveyances, or persons. The fence will enclose a portion of the rear yard that does not provide a thoroughfare for the general public and does not show evidence that it is used as a migratory route for animals.

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

The siting of the fence and deck will not eliminate the sun and/or light exposure on adjacent properties, or result in the elimination of views, vistas, or privacy. The primary viewshed of the immediate vicinity is of the Novato Creek to the northeast. The fence will provide a greater degree of privacy for the residents of the subject property and the residents of the neighboring properties. The design of the fence and deck is compatible with that of other improvements in the vicinity and incorporates materials and colors that are consistent with the natural and built environments.

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

This finding is not applicable to the project.

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 consistent with policies and programs in the Countywide Plan because the project involves the construction of a fence and deck, which would comply with the SF6 (Single Family, 4 to 7 units per acre) land use designation. The project is consistent with the principally permitted residential uses authorized by the BFC-RSP-5.8 (Bayfront Conservation District, Residential, Single-Family Planned, 5.8 units per acre maximum density) zoning district and is incidental to the single-family residential use of the subject property. The proposed project does not interfere with the primary viewshed of the Novato Creek enjoyed by adjacent residents along the northeasterly side of Calypso Shores. The fence provides the subject and adjacent property owners with a greater degree of privacy in their rear yard areas, and is consistent with other development in the surrounding community with respect to style, building materials, and colors. Based on the findings above, the construction of the fence and arbor will not be detrimental to the public interest, health, safety, convenience, or welfare.

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

1. *The fences significantly interfere with views from the appellant's property therefore impacting the peaceful enjoyment of his property.*

Response to Appeal:

The appellant asserts that the construction of the fence at 42 Calypso Shores significantly affects views enjoyed from his property. These impacted views consequently prevent the appellant from the peaceful enjoyment of his property.

The existing fence does not interfere with the primary viewshed of Novato Creek enjoyed by the appellant. Review of an aerial photographs reveals that the appellant's home is located closer to the Novato Creek than the home at 42 Calypso Shores, thereby providing a wider angle of incidence for views of Novato Creek and further providing evidence that there are no obstructions of the primary viewshed enjoyed by the appellant.

The fence constructed at 42 Calypso Shores partially obstructs views from a small window located along the northerly elevation of the appellant's home. However, the only view obstructed is that of the rear yard area at 42 Calypso Shores due to hedges and landscaped areas in the rear yards of properties to the northwest. Furthermore, the fence constructed at 42 Calypso Shores has not obstructed the primary viewshed of Novato Creek and it appears that partial views of the Novato Creek are still accessible from the small window along the northerly elevation of the appellant's home.

The fence at 42 Calypso Shores is accessory and incidental to the primary single-family residential use of the property, utilizes materials and colors that are consistent with the community character, and reflects fencing styles that are commonly found throughout the County. It is reasonable for a property owner who desires additional privacy to construct fences around their yard areas, thereby providing the inhabitants of the subject and surrounding properties with additional privacy. Finally, the fences that have been constructed do not obstruct the appellant's views of Novato Creek to the northeast. This basis of appeal holds no merit based on the discussion above.

2. *The projects are not consistent with Covenants, Conditions, and Restrictions (CC&R's) established by the Keys Landing Homeowners Association.*

Response to Appeal:

The appellant asserts that the proposed project is inconsistent with the Keys Landing Homeowners Association CC&R's. Covenants, Conditions, and Restrictions (CC&R's) are private agreements made between property owners regarding the maintenance and development of their properties. The County's land use and zoning purview over this project is based principally upon policies contained in the Marin Countywide Plan and zoning ordinance. In this particular instance, the development standards of the BFC-RSP zoning district allow the construction of fences over 6 feet in height with Design Review approval. While there may be similarities between standards established by CC&R's and the development standards of various zoning districts, CC&R's are private restrictions and the County does not have the authority to administer, interpret, or enforce them.

SECTION II: PROJECT APPROVAL

NOW, THEREFORE, BE IT RESOLVED that the Marin County Planning Commission hereby denies the Vernef appeal and sustains the Community Development Agency's approval of the Tipping Design Review.

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 November 29, 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 \$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 December 9, 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 29th day of November, 2004, by the following vote to wit:

AYES: Berland, Barner, Dickenson, Greenberg, Holland

NOES: Thompson

ABSENT: Julin

ALLAN BERLAND, CHAIRMAN
MARIN COUNTY PLANNING COMMISSION

Attest:

Jessica Woods

Recording Secretary

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. PC 04-019

**A RESOLUTION DENYING THE VERMEF APPEAL AND SUSTAINING THE
COMMUNITY DEVELOPMENT AGENCY'S APPROVAL OF
THE TONG DESIGN REVIEW CLEARANCE 04-77
32 CALYPSO SHORES, NOVATO
ASSESSOR'S PARCEL 157-321-01**

SECTION I: FINDINGS

- I. WHEREAS Cedric Tong is requesting Design Review Clearance approval for the construction of an 8-foot, 2 inch tall fence (the top 2 feet of the fence consists of open lattice). Also included in the project is an approximately 8-foot, 6-inch high arbor, which extends from the north elevation of the existing residence to the northerly property boundary. The subject property is located at 32 Calypso Shores, Novato and is further identified as Assessor's Parcel 157-321-01.
- II. WHEREAS on September 15, 2004, the Community Development Agency issued an approval of the Tong Design Review Clearance granting authorization for the construction of an 8-foot, 2 inch tall fence and an 8-foot, 6-inch high arbor extending from the north elevation of the existing residence to the northerly property boundary.
- III. WHEREAS, a timely appeal of the Community Development Agency's approval of the Tong Design Review Clearance has been filed by Paul Vermeff asserting the following issues: 1) the fence would obstruct views enjoyed from the appellant's property and therefore interfere with the appellant's peaceful enjoyment of the property; and 2) the project would be inconsistent with the Covenants, Conditions, and Restrictions (CC&R's) of the Keys Landing Homeowners Association.
- IV. WHEREAS the Marin County Planning Commission held a duly noticed public hearing on November 29, 2004, to consider the merits of the project and appeal, and hear testimony in favor of, and in opposition to, the project.
- V. WHEREAS the Marin County Planning Commission finds that this project is Categorically Exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15303, Class 3 of the CEQA Guidelines because it entails construction of accessory structures reasonably related to the residential use of the property with no potentially significant impacts on the environment.
- VI. WHEREAS the Marin County Planning Commission finds that the proposed project is consistent with the Marin Countywide Plan for the following reasons:
 - A. The construction of a fence and arbor would be consistent with the SF6 (Single Family, 4 to 7 units per acre) land use designation;
 - B. The project would be consistent with the prevailing community character and is incidental to the primary residential land use of the property;
 - C. The project would not cause significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation, or other services; and,
 - D. The project would not result in tree removal or grading.

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

- 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 fence and arbor will be situated solely on the subject property and will result in a structure of height, mass and bulk proportionate to the 12,000 square foot site. The fence and arbor are improvements commonly associated with residential development and would be consistent with development patterns elsewhere in the neighborhood. The fence and arbor will incorporate building forms that are commonly used in fence and arbor construction and utilize materials and colors that are consistent with the surrounding natural and built environments.

- 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 project will not impact view, light, air, and privacy of surrounding residences or public areas due to the following reasons: (1) the fence and arbor would not obstruct views of the Novato Creek from adjacent properties; and (2) the fence would provide a greater degree of privacy in the rear yards for residents of the subject and adjacent properties.

- 3. It will not directly, or cumulative, impair, inhibit, or limit further investment or improvements in the vicinity, on the same or other properties, including public lands and rights-of-way.**

The discussion contained in Findings VII (1) and (2) above are supportive of this finding.

- 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 project does not entail the removal of any trees, and no landscaping has been proposed.

- 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 fence and arbor are attractively designed and would be compatible with that of other structures in the vicinity and consistent with the residential use of the property, would respect the surrounding natural environment because no vegetation removal is proposed, and would not diminish views from surrounding properties because the fence would not obstruct adjacent properties views of the Novato Creek to the northeast. The project will not encroach onto adjoining private properties, public lands, or private and public easements and rights-of-way. As discussed in Findings VII (1) and (2) above, the proposal will 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 will result.

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

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

The fence and arbor are modest in scope and are reasonably related to the residential development of the property. As discussed in Findings VII (1) and (2) above, the project would preserve views and privacy enjoyed by adjacent properties, and would result in development that is consistent with the development patterns of the community. The overall scale of the project is compatible with other development in the area and is appropriate given the size and configuration of the property.

b. Drainage systems and appurtenant structures;

The project would not affect site drainage.

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

The project would not result in the reforming of the natural terrain and would not require any 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 development on the property will not interfere with the containment, movement, or circulation of animals, conveyances, or persons. The fence will enclose the rear yard. The 20-foot wide access road adjacent to the northerly property boundary will remain open for the circulation of the public and animals.

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

The siting of the fence and arbor will not eliminate the sun and/or light exposure on adjacent properties, or result in the elimination of views, vistas, or privacy. The primary viewshed of the immediate vicinity is of the Novato Creek to the northeast. The fence will provide a greater degree of privacy for the residents of the subject property and the residents of the neighboring properties. The design of the fence and arbor is compatible with that of other improvements in the vicinity and incorporates materials and colors that are consistent with the natural and built environments.

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

This finding is not applicable to the project.

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 consistent with policies and programs in the Countywide Plan because it involves the construction of a fence and arbor, which would comply with the SF6 (Single Family, 4 to 7 units per acre) land use designation. The project is consistent with the principally permitted residential uses authorized by the BFC-RSP-5.8 (Bayfront Conservation District, Residential, Single-Family Planned, 5.8 units per acre maximum density) zoning district and is incidental to the single-family residential use of the subject property. The proposed project does not interfere with the primary viewshed of Novato Creek enjoyed by adjacent residents along the northeasterly side of Calypso Shores. The fence provides the subject and adjacent property owners with a greater degree of privacy in their rear yard areas, and is consistent with other development in the surrounding community with respect to style, building materials, and colors. Based on the findings above, the construction of the fence and arbor will not be detrimental to the public interest, health, safety, convenience or welfare.

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

1. *The fences significantly interfere with views from the appellant's property therefore impacting the peaceful enjoyment of his property.*

Response to Appeal:

The appellant asserts that the construction of the fence at 32 Calypso Shores significantly affects views enjoyed from his property. These impacted views prevent the appellant from the peaceful enjoyment of his property.

The existing fence at 32 Calypso Shores does not interfere with the primary viewshed of Novato Creek enjoyed by the appellant. Review of an aerial photographs reveals that the appellant's home is located closer to the Novato Creek than the home at 32 Calypso Shores, thereby providing a wider angle of incidence for views of Novato Creek and further providing evidence that there are no obstructions of the primary viewshed enjoyed by the appellant.

The fence constructed at 32 Calypso Shores is situated along the northerly property line and at no point obstructs views enjoyed by the appellant of Novato Creek. The fence does obstruct the appellant's views of the rear yard area at 32 Calypso Shores. However, with the exception of an entryway, there are no windows located along the southeasterly elevation of the appellant's home where views could be impacted. Finally, the primary bulk of the appellant's home at 38 Calypso Shores is located approximately 30 feet to the north of the subject fence (and property line) at 32 Calypso Shores, thereby further minimizing potential impacts to primary views to the northeast.

The fence at 32 Calypso Shores is a reasonable accessory improvement for a single-family residential property. It utilizes materials and colors that are consistent with the community character, and reflects fencing styles that are commonly found throughout the County. It is reasonable for a property owner who desires additional privacy to construct fences around their yard areas, thereby providing the residents of the subject and surrounding properties with additional privacy. Finally, the fence that has been constructed does not obstruct the appellant's views of Novato Creek to the northeast. This basis of appeal holds no merit based on the discussion above.

2. *The projects are not consistent with Covenants, Conditions, and Restrictions (CC&R's) established by the Keys Landing Homeowners Association.*

Response to Appeal:

The appellant asserts that the proposed project is inconsistent with the Keys Landing Homeowners Association CC&R's. Covenants, Conditions, and Restrictions (CC&R's) are private agreements made between property owners regarding the maintenance and development of their properties. The County's land use and zoning purview over this project is based principally upon policies contained in the Marin Countywide Plan and zoning ordinance. In this particular instance, the development standards of the BFC-RSP zoning district allow the construction of fences over 6 feet in height with Design Review approval. While there may be similarities between standards established by CC&R's and the development standards of various zoning districts, CC&R's are private restrictions and the County does not have the authority to administer, interpret, or enforce them.

SECTION II: PROJECT APPROVAL

NOW, THEREFORE, BE IT RESOLVED that the Marin County Planning Commission hereby denies the Vernef appeal and sustains the Community Development Agency's conditional approval of the Tong Design Review.

SECTION III: VESTING OF RIGHTS

The applicant must vest this Design Review Clearance approval by securing a Building Permit for all of the approved work and substantially completing all approved work by November 29, 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 \$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 December 9, 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 29th day of November, 2004, by the following vote to wit:

AYES: Berland, Barner, Dickenson, Greenberg, Holland

NOES: Thompson

ABSENT: Julin

ALLAN BERLAND, CHAIRMAN
MARIN COUNTY PLANNING COMMISSION

Attest:

Jessica Woods
Recording Secretary