

MARIN COUNTY PLANNING COMMISSION HEARING MINUTES
January 24, 2005
Marin County Civic Center, Room #328 - San Rafael, California

Commissioners Present: Steve C. Thompson, Chairman
Jo Julin, Vice Chair
Allan Berland
Hank Barner
Don Dickenson
Randy Greenberg
Wade Holland

Commissioners Absent: None

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

Minutes Approved on: **February 28, 2005**

Convened at 1:02 p.m.
Adjourned at 6:15 p.m.

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 – None

- c. Approval of Minutes – January 10, 2005

M/s, Holland/Julin, to approve the Minutes of January 10, 2005, as amended. Motion passed 7/0.

2. COMMUNICATIONS

The Commission acknowledged several pieces of correspondence for their review.

Chairman Thompson provided staff with a video tape called, “*Ethics Orientation for State Officials*” for staff’s review.

3. DIRECTOR'S ORAL REPORT

- a. Update on Board of Supervisors Actions

January 11, 2005: Board approved Oakview as recommended by the Commission; and the Board approved contract amendment for additional work in regard to Sorokko.

February 1, 2005: Vermeil Bel Marin Keys Appeal

February 8, 2005: Lamar Design Review Appeal

- b. Report on On-Going/Pending Development Projects - None

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

5. FUTURE AGENDA DISCUSSION ITEMS, FIELD TRIPS

Update on Planning Commission Actions

February 14, 2005

- No Items Scheduled to Date.

February 28, 2005

- Kirkos Design Review/Tidelands Permit: *Reconstruction of a boathouse accessory to an existing single-family residence. (Site visit on February 2, 2005 at 2:00 p.m.)*

March 7, 2005 (Special Hearing)

- Single-Family Residential Design Guidelines: *Public hearing to consider recommending adoption of Draft Single-Family Residential Design Guidelines (Countywide).*

March 14, 2005

- Krane Appeal of Agency Withdrawal of Design Review Application: *Public hearing to consider applicant appeal of staff withdrawal of Design Review application proposing a new single-family residence. Project was reviewed by Planning Commission in August 2002 and continued with applicant's consent to revise project design. The agency withdrawal is based upon lack of submittal of revised project since August 2002 Planning Commission hearing. (Old Rancheria Road, Nicasio)*

March 28, 2005

- Development Code Technical Amendments: *Public hearing to consider recommending adoption of technical corrections and other minor revisions to the Development Code (Countywide).*

Ratification of resolution approving the appeal filed by Kenneth Harth of the Community Development Agency's administrative denial of the Canon Variance. The project is a proposal to construct a new covered entry porch and approximately 118.5 square feet of additions onto the existing 2,433 square foot single-family dwelling. Variance approval is required because (1) the porch would encroach 10 feet, 8 inches into the front yard setback where a 6-foot encroachment would otherwise be permitted, and (2) the 31.5 square foot bedroom addition would be located 22 feet, 4 inches from the westerly front property line where a setback of 25 feet from the front property line would otherwise be required. The appellant sets forth the following bases of appeal: 1) the finding for special circumstances can be made due to the existence of a large tree and steep slope in the rear yard, and due to the overall width of North Almenar Drive; 2) the project would not constitute a special privilege because other single family dwellings have similar encroachments; and 3) the project does not result in detriment because the community character is defined by various degrees of structural encroachments into yard areas along North Almenar Drive. The subject property is located at **224 N. Almenar Drive, Greenbrae**, and is further identified as **Assessor's Parcel 070-095-05**.

Brian Crawford, Deputy Director of Planning Services, summarized the staff report and recommended that the Commission sustain the Harth Appeal of the Community Development Agency's denial of the Canon Variance. Attached the Commission's review and consideration was a revised Resolution incorporating modifications and findings approving the Canon Variance consistent with the direction provided by the Commission.

Commissioner Dickenson and Commissioner Greenberg suggested a few changes to the Resolution.

Commissioner Berland desired the penalty of perjury language to be added to page 5 of the Resolution in regard to Item "h." Agency Director Hinds believed the penalty of perjury language would have more teeth if it was included in the Development Code, but he agreed to add the language to the conditions.

Chairman Thompson asked for a motion.

M/s, Julin/Greenberg, to approve the Resolution as prepared by staff with the amendments and additional language as discussed. Motion passed 5/2. (Commissioner Dickenson and Commissioner Barner opposed).

MARIN COUNTY PLANNING COMMISSION

RESOLUTION PC 05-001

A RESOLUTION SUSTAINING THE HARTH APPEAL AND OVERTURNING
THE COMMUNITY DEVELOPMENT AGENCY'S ADMINISTRATIVE
DENIAL OF THE CANON VARIANCE 04-37
ASSESSOR'S PARCEL 070-095-05
224 N. ALMENAR DRIVE, GREENBRAE

SECTION I: FINDINGS

- I. WHEREAS Kenneth Harth, AIA, on behalf of the property owners, Ted and Janet Canon, has submitted an application for Variance proposing to construct a new covered entry porch and approximately 118.5 square feet of additions onto the existing 2,433 square foot single-family dwelling (per Marin County Assessor's Records). Variance approval is required for the following reasons: (1) the covered entry porch would encroach 10 feet, 8 inches into the front yard setback where a 6-foot encroachment would otherwise be permitted; and (2) the 31.5 square foot bedroom addition would be located 22 feet, 4 inches from the westerly front property line where a setback of 25 feet from the front property line would otherwise be required. The subject property is located at **224 N. Almenar Drive, Greenbrae**, and is further identified as **Assessor's Parcel 070-095-05**.

- II. WHEREAS, on September 15, 2004, the Community Development Agency denied the administrative Variance request because staff was unable to make findings related to special circumstance, special privilege, and detriment according to Marin County Code Section 22.54.040.A, C, and D. In support of the denial, agency staff found that the application materials had not sufficiently demonstrated that development of the property was constrained by a unique circumstance that would preclude the property owners from accommodating further residential development within the building envelope as established by the governing R-1:B-2 zoning district. The grant of a Variance without a prerequisite special circumstance would constitute a special privilege, and as such, this finding could not be made. Finally, agency staff found that the granting of the Variance would be detrimental to the public interest because it would allow a property owner to develop their property in a way that is inconsistent with the development standards of the R-1:B-2 zoning district, thereby creating an incremental disparity with those property owners who comply with the development standards of the governing zoning district.

- III. WHEREAS, on September 27, 2004, a timely appeal of the Community Development Agency's administrative denial of the Canon Variance was filed by Kenneth Harth, Architect, on behalf of the property owners, Ted and Janet Canon, asserting the following bases of appeal: 1) the finding for special circumstances can be made because of the existence of a large tree and steep slope in the rear yard, and due to the restrictive overall width of North Almenar Drive; 2) the project would not constitute a special privilege because other single family dwellings enjoy similar encroachments; and 3) the project does not result in detriment to the community because the community character is defined by various degrees of structural encroachments into the front yard areas along North Almenar Drive.

- IV. WHEREAS the Marin County Planning Commission held a duly noticed public hearing on January 10, 2005, to consider the merits of the Harth appeal of the Community Development Agency's administrative denial of the Canon Variance, hear testimony in favor of, and in opposition to, the project.

- V. WHEREAS, after considering the Harth appeal and testimony provided at the January 10, 2005 hearing, the Marin County Planning Commission finds that the project, as modified by conditions of approval herein, is

consistent with the mandatory findings to grant a Variance (Section 22.54.050 of the Marin County Code and California Government Code Section 65906) and as such overturns the Community Development Agency's denial of the Canon Variance.

- A. There are special circumstances applicable to the property (e.g., location, shape, size, surroundings, or topography), so that the strict application of this Development Code denies the property owner privileges enjoyed by other property owners in the vicinity and under identical zoning districts.**

The existence of a heritage oak to the rear of the existing residence and within the permitted rear yard area constitutes a special circumstance that denies the property owner privileges enjoyed by other property owners in the vicinity because the size and location of the heritage oak tree are unique physical features to the subject property that deprive the property owners the ability to locate development within the rear yard envelope as prescribed by the R-1:B-2 zoning district. In support of this finding, it is noted that Countywide Plan Policy EQ 3.14 encourages the preservation of heritage and other significant trees. This finding of special circumstance is particular to the subject property and this project only insofar as other properties in the surrounding neighborhood that are also subject to the same zoning do not have heritage oak trees in the permitted rear yard area that constrain development consistent with the zoning.

- B. That granting the Variance does not allow a use or activity which is not otherwise expressly authorized by the regulations governing the subject parcel.**

The governing R-1:B-2 zoning district is a single-family designation. Granting a Variance for the proposed addition does not change the existing single-family use of the property.

- C. That granting the Variance does not result in special privileges inconsistent with the limitations upon other properties in the vicinity and zoning district in which the real property is located.**

The granting of a Variance for the property does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity under an identical zoning district because, as explained in Finding V.A above, development on the property is constrained by the presence of a large heritage oak tree that is a unique physical feature. Therefore, the grant of a Variance for a minor encroachment into the front yard for a front porch addition and small addition does not constitute a special privilege in comparison to other properties in the surrounding community that are not constrained by heritage oaks within permitted yard areas and in close proximity to existing building footprints. In addition, the expansion of the existing residence allowed by this Variance does not result in a disproportionately large building when viewed in the context of the surrounding neighborhood.

- D. That granting the Variance will not be detrimental to the public interest, health, safety, convenience, or welfare of the County, or injurious to the property or improvements in the vicinity and zoning district in which the real property is located.**

The proposed project is not detrimental to the public interest, health, safety, convenience, or welfare of the County, or injurious to the property or improvements in the vicinity and zoning district in which the real property is located because it does not result in impacts to light, air, privacy and views to surrounding properties. The proposed covered porch and bedroom addition would be located on the westerly side of the existing residence, would utilize materials and colors that are compatible with the surrounding natural and built environments, and not project beyond existing building lines that already encroach into the front yard setbacks. The proposed addition is small in scale and would provide adequate separation from adjacent residences without resulting in adverse impacts with respect to light, air, privacy and views to surrounding properties.

- 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 15301, Class 1 because it entails construction of an addition on a residentially developed property that would not result in grading or other adverse environmental impacts.
- VII. WHEREAS the Marin County Planning Commission finds that the proposed project is consistent with the Marin Countywide Plan and the Kentfield/Greenbrae Community Plan because the project authorizes the construction of a residential addition onto an existing single family residence which is consistent with the SF5 (Single Family, 2 to 4 units per acre) land use designation. Additionally, 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.

SECTION II: CONDITIONS OF PROJECT APPROVAL

NOW, THEREFORE, BE IT RESOLVED that the Marin County Planning Commission hereby sustains the Harth Appeal and overturns the administrative denial of the Canon Variance application subject to the following conditions:

Marin County Community Development Agency, Planning Division

1. Pursuant to Marin County Code Sections 22.54.050, AND AS MODIFIED BY THESE CONDITIONS OF APPROVAL, the Canon Variance 04-37 is approved for the construction of a new covered entry porch and bedroom addition that encroach into the required front yard setbacks. The subject property is located at **224 N. Almenar Drive, Greenbrae**, and is further identified as **Assessor's Parcel 070-095-05**.
2. EXCEPT AS MODIFIED BY THESE CONDITIONS OF APROVAL, plans submitted for a building permit shall substantially conform to plans on file in the Marin County Community Development Agency and identified as "Exhibit A," entitled, "APN# 070-095-05," consisting of 1 sheet, prepared by Fredric Divine Associates, Architects, date stamped August 3, 2004. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall submit one complete set of revised plans to the Director for review and approval, and incorporated as Exhibit A-1, that indicate the following modifications:
 - a. Location of the columns of the covered porch to be in the same horizontal building plane of the existing master bedroom (as indicated by hand drawn revisions on "Exhibit A"); and,
 - b. Location of the bedroom addition along the same horizontal building plane of the existing living room (as indicated by hand drawn revisions on "Exhibit A").
3. The 37-inch oak identified on "Exhibit A" and located to the rear of the existing residence shall be preserved to the maximum extent and time possible. Removal of the tree is only permitted if its health is adversely affected to the extent that the continued survival of the tree is not possible as determined by a qualified arborist. Minor pruning, consistent with proper arboricultural practices, is allowed for safety purposes and/or for the continued health of the tree. BEFORE ISSUANCE OF A BUILDING PERMIT for the approved work identified in Conditions 1 and 2 above, the applicant shall install temporary construction fencing around the dripline of the existing 37-inch oak tree to prevent damage to the tree from any grading, and/or construction, materials storage, soil stockpiling, or other construction activity. The fencing is intended to protect the tree during construction and shall remain until all construction activity is complete. The applicant shall submit a copy of the temporary fencing plan and site photographs confirming installation of the fencing to the Community Development Agency.
4. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall revise site plan or other first sheet of the office and job site copies of the Building Permit plans to list these Variance Conditions of Approval as notes.

5. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall revise the plans to depict the location and type of all exterior lighting for review and approval of the Director. Exterior lighting shall be permitted for safety purposes only, must consist of low wattage fixtures, and must be directed downward and hooded. The Building Plans shall include specifications (cut sheet) for all exterior lights.
6. BEFORE FINAL INSPECTION AND UPON VESTING OF THIS PROJECT, the Community Development Agency shall file this Notice of Decision, including all conditions of project approval, with the Marin County Recorder's Office to advise future property owners of the property development restrictions, particularly with respect to the preservation of the heritage oak tree located to the rear of the existing residence.
7. 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. Work at the site shall be limited to the hours of 7:00 AM and 5:00 PM, Monday through Friday, and 9:00 AM to 4:00 PM Saturday. No work shall be permitted on Sundays or holidays.
8. BEFORE FINAL INSPECTIONS, the applicant shall submit a report by a qualified arborist that assesses the health of the 37-inch heritage oak tree located to the rear of the existing residence as indicated on "Exhibit A." The report shall include recommendations to ensure the continued health and livelihood of the subject tree, particularly those that may have been impacted by construction activity.
9. Any changes or additions to the project shall be submitted to the Community Development Agency in writing for review and approval before the contemplated modifications may be initiated. Construction involving modifications that do not substantially comply with the approval, as determined by the Community Development Agency staff, may be required to be halted until proper authorization for the modifications are obtained by the applicant.

Department of Public Works, Land Development

10. Improvements in the right-of-way shall be at grade.
11. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall provide pertinent design information as specified below.
 - a. The site/driveway retaining walls, drainage, and grading plans must be designed by a Registered Civil Engineer. Plans must have his/her signature and wet stamp.
 - b. A separate Building Permit is required for site/driveway retaining walls with a height more than 4 feet (or 3 feet when backfill area is sloped or has a surcharge).
 - c. The above plans must be reviewed and approved by a Registered Soils Engineer. Certification shall be either by the engineer's stamp and signature on plans, or by stamp and signed letter.
 - d. Provide a drainage plan for the project.
 - e. An Encroachment Permit will be required for construction within the road Right-Of-Way.
 - f. Clearly show and label all easements on site plan. Label the 5-foot public utilities easement along the easterly and northerly property lines.
 - g. Submit Erosion and Siltation Control Plans. Plans shall indicate total acreage of site disturbance.

- h. Note on the plans that the Design Engineer/Architect shall certify to the County in writing, under penalty of perjury, that all grading, drainage and retaining wall construction was done in accordance with plans and field directions. Also note that driveway, parking and other site improvements shall be inspected by a Department of Public Works engineer.

SECTION III: VESTING, PERMIT DURATION, AND APPEAL RIGHTS

NOW, THEREFORE BE IT FURTHER RESOLVED that the applicant must vest this Canon Variance 04-37 approval by obtaining a Building Permit for the approved work and substantially completing all work before January 24, 2007, 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 Agency Director approves it. An extension of up to four years may be granted for cause pursuant to Section 22.56.050.B.3 of the Marin County Code.

The Building Permit approval expires if the building or work authorized is not commenced within one year from the issuance of such permit. A Building Permit is valid for two years during which construction is required to be completed. All permits shall expire by limitation and become null and void if the building or work authorized by such permit is not completed within two years from the date of such permit. Please be advised that if your Building Permit lapses after the vesting date stipulated in the Variance approval (and no extensions have been granted), the Building Permit and Variance approvals may become null and void. Should you have difficulty meeting the deadline for completing the work pursuant to a Building Permit, the applicant may apply for an extension to the Variance at least 10 days before the expiration of the Variance approval.

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 **February 3, 2005.**

SECTION IV: VOTE

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin, State of California, on the 24th day of January, 2005, by the following vote to wit:

AYES: Thompson, Julin, Berland, Greenberg, Holland

NOES: Barner, Dickenson

ABSENT:

STEVE THOMPSON, CHAIRPERSON
MARIN COUNTY PLANNING COMMISSION

Attest:

Jessica Woods
Recording Secretary

Consideration of a request from the San Rafael Rock Quarry for a time extension in order to comply with the Planning Commission's requirements for approval of one office building at the quarry's facility. On September 27, 2004, the Planning Commission granted approval for the continued use of one 3,738 square foot office building by up to 15 administrative employees in conjunction with the quarry's operations and required the applicant to vacate staff from five other as-built office buildings totaling 10,913 square feet within 90 days (by December 27, 2004) and to remove those five office buildings within six months (by March 27, 2005). The applicant seeks to have the deadline for the vacation of the employees to coincide with the deadline for the removal of the buildings (by March 27, 2005), instead of the 90 days that were required by the Planning Commission. The applicant has indicated that a site within the City of San Rafael (northeast corner of Kerner Boulevard and Morphew Street – Assessor's Parcel 009-291-10) has been found for the five office buildings and that relocation of the staff and offices would occur once approvals are obtained from the City of San Rafael for the use of that site. The San Rafael Rock Quarry 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**.

Commissioner Dickenson disclosed that he met with Gary Giacomini prior to the hearing, at Mr. Giacomini's request, to discuss the types of information that would help support the time extension request. Commissioner Greenberg noted that she emailed Jean Starkweather about this matter but has not received a reply. Chairman Thompson inquired about the time frames that are currently faced by potential tenants in search of office space.

Tom Lai, Principal Planner, summarized the staff report and recommended that the Commission review the administrative record, conduct a public hearing, and move to adopt the attached Resolution granting an extension of time to the San Rafael Rock Quarry to vacate administrative staff from five office buildings.

Principal Planner Lai stated that the following additional conditions are recommended: 1) To require the Quarry to enter into a Performance Agreement that is secured by financial assurances, guaranteeing the removal of the offices and staff by March 27, 2005; and 2) that no further time extensions beyond March 27th date would be appropriate in this case, and failure to comply with that final deadline would be grounds for the County to initiate enforcement proceedings under Chapters 1.05 and 22.122 of the County Code. Also, County Counsel suggested modifying Condition 2 to require the Quarry to enter into that Performance Agreement with sufficient time before the March 27th deadline.

Commissioner Berland asked staff to explain the financial assurances. Principal Planner Lai responded that staff would require a submittal of an estimate for labor and materials necessary to do the work and that the standard department practice is to require a letter of credit, cash or a bond for 150% of that approved estimate as security to the Performance Agreement.

Commissioner Berland asked staff if the Commission's decision could be appealed to the Board. Principal Planner Lai responded in the affirmative. Staff added that if appealed to the Board it would be heard within a month.

Commissioner Dickenson asked staff if the City of San Rafael's Zoning Administrator is likely to approve the Quarry's application. Principal Planner Lai responded that the San Rafael Planning Director confirmed with staff that they expect the project to be approved.

Commissioner Greenberg asked staff to explain the faxed cover sheet from Cor-O-Van in regard to eight moves because of the items coming back. Principal Planner Lai deferred that question to the applicant.

Commissioner Greenberg noted that the contract with Cor-O-Van was not signed by the Dutra Group and desired an explanation in that regard. Principal Planner deferred that question to the applicant as well.

The public hearing was opened.

Gary Giacomini, representing San Rafael Rock Quarry, agreed with staff's recommendations. He also recommended that the Commission require that they provide satisfactory reassurances to cover the cost of the move by February 27th. He explained that the City of San Rafael desired these buildings to be built and the Quarry to occupy them and the City is granting a 16 to 18 month approval for the relocation of the office buildings. He pointed out that there is a combination of buildings and some are being pulled off of the Quarry and demolished, some buildings are being moved from Quarry and one or two of the buildings are being purchased new, but the commitment is that all the buildings left at the Quarry would be moved by the deadline. Also, he noted that they are not asking for the continuance of the ultimate deadline that was set, namely removal of the buildings because they cannot remove the people until San Rafael acts. He pointed out that San Rafael assured the Quarry that they would approve the action and then rush through the building permit process in order to have the permits this week. To date San Rafael has not received any objection in this regard and to that extent they believed it would be granted.

Amy Dutra, applicant, stated that Williams Scotsman would move the modulares themselves and Cor-O-Van provided the estimate to come in and remove all material inside the buildings, so that would take more than four trips to complete. She explained that once items are removed for relocation they would not be brought back to the Quarry. She pointed out that the purchase order is about \$100,000 for Williams Scotsman and that Cor-O-Van's portion is around \$20,000, so that probably \$125,000 would be the total amount for all of the work. She further noted that the Quarry had approved the purchase order for the relocation work.

Jonathan Frieman, representing, San Pedro Road Coalition, discussed the long history of the Quarry violating the law and believed their demand undermines the order of the Board of Supervisors after not planning for their consequences of breaking the law. He then recommended that the Commission do the following: deny the extension; receive immediate enforcement of the order along with media coverage; suspend the Use Permit until the Quarry has complied with the order; or revoke the use permit because it is within the power of the Commission.

The hearing was closed to the public.

Chairman Thompson asked staff if Mr. Friedman's suggestion is within the purview of the Commission in regard to suspending the Use Permit. Agency Director Hinds respectfully disagreed with suspending the Use Permit as suggested by Mr. Frieman. Nancy Grisham, Deputy County Counsel, explained that there are certain procedures that must be followed when modifying or revoking a Use Permit, it must be properly noticed and must provide an opportunity to have public input as well as input from the owner of the Use Permit.

Commissioner Dickenson noted that he made the original motion to reduce the timeframe and the intent was to keep the applicant on a short leash, so the intent was to hopefully get the Quarry moving sooner than later as well as give the Commission time to review their actions. He believed what is proposed and the evidence submitted documented the fact that the Quarry has been taking action since shortly after the Board hearing to pursue moving. He pointed out that the City of San Rafael desired this project to be built. Also, as long as the staff has not heard anything from San Rafael that contradicts their intent to approve, he assumed that it would be approved. He is satisfied that the Quarry has been diligently pursuing the move and what is proposed would not only remove employees from the property, but remove the buildings from the property. He added that he is prepared to support this request and believed the financial guarantee is appropriate and Mr. Giacomini's proposal of prior to February 27th, 2005 should be imposed as a condition.

Vice Chair Julin agreed that progress has been made and the request by the Quarry is reasonable. She further supported staff's recommendation.

Commissioner Berland stated that his understanding was that the temporary office space would be rented in an office building and the 90 days was reasonable to find office space. He is reluctant to find that there was a good faith effort to find temporary office space within the 90-day period, so he cannot support this request.

Chairman Thompson asked for a motion.

M/s, Dickenson/Julin, that the Planning Commission approve a Resolution granting an extension of time to the San Rafael Rock Quarry to vacate administrative staff from the five office buildings as described in the draft Resolution with a revision to Condition 2 to state, “Prior to February 27, 2005 the applicant shall submit a performance agreement with financial assurances acceptable...”

Commissioner Berland expressed concern for the 8 to 10 week period and believed this project would be delayed. He recommended moving forward as soon as possible.

Commissioner Greenberg noted that if on Wednesday the matter did not go perfectly well before the City of San Rafael’s Zoning Administrator and there are delays, she did not desire to have the Quarry come back to the Commission. Commissioner Dickenson responded that Condition 3 would cover her concern.

Motion passed 6/1 (Commissioner Berland opposed).

Chairman Thompson announced at 2:38 p.m. that the Commission would take a short recess and then reconvene with the last agenda item.

MARIN COUNTY PLANNING COMMISSION

RESOLUTION PC 05-002

A RESOLUTION GRANTING AN EXTENSION OF TIME TO THE
SAN RAFAEL ROCK QUARRY TO VACATE ADMINISTRATIVE STAFF
FROM FIVE OFFICE BUILDINGS

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

SECTION I: FINDINGS

- I. WHEREAS on September 27, 2004, the Planning Commission granted approval for the continued use of one 3,738 square foot office building by up to 15 administrative employees and required the Quarry to vacate staff from five other as-built office buildings totaling 10,913 square feet within 90 days (by December 27, 2004) and to remove those five office buildings within six months (by March 27, 2005). The Planning Commission's decision was appealed to the Board of Supervisors by the Quarry. On October 26, 2004, the Planning Commission's action and deadlines were sustained as a result of the Board not being able to obtain a majority vote on an action either supporting or denying the appeal. The property is 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**.
- II. WHEREAS on December 22, 2004, Gary Giacomini, the Quarry's legal counsel, submitted a letter request to the Planning Commission to extend the deadline to vacate the administrative staff so that it would coincide with the final deadline that was established to remove the buildings (March 27, 2005), instead of the 90 days that were required by the Planning Commission which would have expired on December 27, 2004. In support of this request, Mr. Giacomini has submitted information indicating that since the Planning Commission's September 27th decision, the Quarry has diligently searched for an off-site location for the offices and has found a suitable property within the City of San Rafael. The property is located at 2350 Kerner Boulevard (Assessor's Parcel 009-291-10), on the northeast corner of Kerner Boulevard and Morphew Street, just south of the City's Public Works facility/corporation yard. The Quarry has submitted an application for a Use Permit and Design Review to the City for the use of the modular offices for a temporary 18-month period, during which time construction of two approved permanent office buildings on the site would be completed to permanently accommodate the Quarry's administrative staff. According to correspondence received from Bob Brown, the City's Community Development Director, construction of the permanent office buildings is scheduled to commence in Spring 2005. A hearing on the Use Permit and Design Review has been scheduled before the City's Deputy Zoning Administrator on January 26, 2005.
- III. WHEREAS the Marin County Planning Commission held a duly-noticed public hearing on January 24, 2005 to consider the time extension request and testimony in favor of, and against, the time extension.
- IV. WHEREAS the Marin County Planning Commission finds that the applicant has expended good faith efforts to comply with the deadlines imposed by the Planning Commission, based on the following factors.
 - 1. The applicant submitted permit applications to legalize the one approved office building before the November 12th, 2004 deadline that was imposed by the Planning Commission. County records indicate that the building permit application was filed on November 8, 2004. Although the building permit has not been issued due to factors relating primarily to required modifications for conformance with accessibility requirements, the Building Permit application meets all requirements and has received approval from the Planning and Environmental Health Service Divisions as well as the Department of

Public Works. A septic permit renewal was granted on January 2, 2004 for a new system that would service the one approved office building.

2. The applicant has submitted documentation indicating that efforts were made following the Planning Commission's hearing to find alternative locations that could accommodate the five offices that were required to be relocated.

- V. WHEREAS the Marin County Planning Commission notes that, although the applicant has provided evidence that efforts have been expended to seek alternative locations for the Quarry's offices, the fact remains that the applicant has been unable to meet the initial deadline imposed by the Planning Commission to vacate the administrative staff from the five office buildings. Based on this, a one-time extension of time is appropriate provided the applicant is required to submit financial assurances guaranteeing the removal of the offices and staff by the original, March 27, 2005 deadline. However, further extensions would not be appropriate.

SECTION II: ACTION

NOW, THEREFORE BE IT RESOLVED that the Marin County Planning Commission grants an extension of time to the San Rafael Rock Quarry to vacate the administrative staff from five office buildings at its facility that is located at 1000 Point San Pedro Road, San Rafael on Assessor's Parcels 184-01-09, -15, -16, and -52. This determination is based on the applicant's compliance with the following requirements.

1. The applicant shall vacate and remove the five office buildings totaling 10,913 square feet and administrative staff by March 27, 2005 and obtain an inspection from the Community Development Agency staff verifying compliance with this requirement.
2. Prior to ~~March~~ February 27, 2005, the applicant shall submit a performance agreement with financial assurances acceptable to the Community Development Agency Director guaranteeing the removal of the five office buildings and administrative staff by March 27, 2005.
3. No further extensions to the above deadlines shall be granted. Non-compliance with the above requirements shall constitute grounds for the County to commence enforcement proceedings pursuant to Marin County Code Chapters 1.05 and 22.122.

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 February 3, 2005**.

IV: VOTE

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin, State of California, on the 24th day of January 2005, by the following vote to wit:

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

NOES: Berland

ABSENT:

STEVE THOMPSON, CHAIRMAN
MARIN COUNTY PLANNING COMMISSION

Attest:

Jessica Woods
Recording Secretary

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

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

(This item was continued from the hearings of August 23, 2004 November 15, 2004, and December 13, 2004.)

Commissioner Holland noted that Attorney Douglas Ferguson, representing the owners, submitted a letter to staff and the Commission, dated January 19, 2005 in which he contends that Commissioner Holland has a conflict of interest. Commissioner Holland said that after discussing the matter with Counsel and staff, he determined that there is no conflict of interest, and therefore, he would not be recusing himself from the matter.

Commissioner Dickenson disclosed that he received a phone call from Mr. Ferguson regarding this matter and the substance of the conversation was very similar to the issues raised in Mr. Ferguson's letter dated January 19th, 2005. Commissioner Greenberg disclosed that she received a telephone call from Catherine Caufield in regard to this matter and she faxed Ms. Caufield a copy of Mr. Ferguson's letter dated January 19, 2005.

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

Senior Planner Patri then recommended several modifications to the easements and Resolution for the Commission's review.

Commissioner Berland discussed the condition concerning the homeowner's Tax Exemption and asked staff to explain. Agency Director Hinds agreed that the project has been going through an unusual lengthy process, but most of the time delay has been at the request of the applicant's representative as they were tracking the process of a different project. As a result, the project is now subject to the requirements of AB-1492 that went into effect January 1st, 2004, which raised questions of how this new law would be implemented and how Marin County's administration of the Williamson Act would be reviewed. Consequently, some County staff members went to

Sacramento to discuss this project and to determine to what degree the State Department of Conservation staff concurred with their recommendation. In the course of this discussion, County staffers were able to identify several different conditions that addressed most of the concerns expressed by the State Department of Conservation (DOC) staff. Agency Director Hinds stated there is a lot of uncertainty with future implementation of AB-1492 and staff felt it makes sense for Marin County to pursue non-renewal of this contract. If the contract is non-renewed, staff believed that would take away most of the controversy and most of the concerns expressed by the State Department of Conservation staff, including the fact that the proposed residence would be a second home. Staff further believed it would be very difficult for the owners to indicate that the proposed residence is their primary residence, as they have stated they have no intention of making it their primary residence. Therefore, staff agreed to withdraw the recommended condition in regard to this being their primary place of residence as documented through the filing of a property Homeowner's Tax Exemption (Condition 26B).

Commissioner Holland expressed concern for the use of the BCPUD lands in regard to continued cattle grazing. Senior Planner Patri responded that staff received no study as to how many cattle the Moritz property could sustain without the use of the BCPUD lands. Staff noted there are two wells on the property and a new well has been drilled to serve the proposed new residence.

Commissioner Dickenson asked staff if there have been any prior amendments to the Williamson Act Contract. Nelson Gremmels, Principal Appraiser for the County's Assessor's Office, responded that to his knowledge there have been no changes to the contract and it is an agricultural contract.

Commissioner Dickenson asked staff where in the contract it stated that the applicant is required to continue agricultural use on the property. Staff believed it is the intent of the contract to continue agricultural use, but the Williamson Act did not clearly articulate that fact, as the proposed Easement would.

Commissioner Dickenson compared the proposed Easement with the Williamson Act Contract and asked Appraiser Gremmels if there is a difference in tax benefits. Appraiser Gremmels responded that it would depend on how the Easement is written. He further believed it would be appraised as a single-family residence, which is the highest and best use.

Commissioner Dickenson asked staff if the County had ever established an economic standard for agricultural properties. Agency Director Hinds responded he is not aware of the County applying a rigid or particularly defined economic test. Commissioner Dickenson believed a standard could be adopted if the County desired to create some equitable comparison. Agency Director Hinds responded that an analysis was initiated in conjunction with the Countywide Plan, which reviewed how development of large expensive homes could affect the ability of agricultural property owners to pay for property taxes and maintain basic agricultural operations. Staff added that one recommendation from the Department of Conservation is to develop agricultural income and production requirements to determine eligibility into the Williamson Act and to recommend non-renewal of Williamson Act properties, if they fail to comply.

Commissioner Dickenson asked Appraiser Gremmels if he has any sense as to how many of the Williamson Act properties either do or do not have Homeowner's Exemptions. Appraiser Gremmels responded that the majority of the properties do have a Homeowner's Tax Exemption because these properties are mostly old family ranches.

Commissioner Barner expressed concern for the non-renewal of the Williamson Act contract. Agency Director Hinds responded that staff's recommendation is based on conversations with the State Department of Conservation and staff is proposing that either the applicant or Board non-renew the contract for this parcel of land.

Commissioner Barner commented on AB-1492 in regard to penalties. Agency Director Hinds responded that the financial penalty is associated with the owner.

Commissioner Greenberg discussed page 8 of the staff report and asked staff if the contract runs with the land. Senior Planner Patri responded that the contract runs with the land and is automatically renewed every year for a ten-year term.

Commissioner Greenberg expressed concern for setting precedence for approving a second home on lands zoned C-APZ. Appraiser Gremmels responded that over the last 18 years the only new primary residences that have been built on agricultural properties were built on properties that had no residences to start and/or the old homes were demolished and a new home was rebuilt. Also, there are provisions under Board Resolution 71-38 that allow ranchers to have more than one house, if the use can be justified. He further stated that to the best of his recollection there have been very few tear downs replaced with new houses in similarly zoned areas.

Commissioner Berland discussed PC Attachment 27 in regard to copies of provisions of the Government Code and asked staff if this is independent of staff or is it attached to a letter of memorandum. Senior Planner Patri responded that she submitted the material for the Commission's review.

The hearing was opened to the public.

Michael Moritz, applicant, recommended that the Commission approve what he believed to be a modest plan for the Vierra Ranch. He asked the Commission to consider the facts provided that the law is very clear, and "*one principal single-family residence*" is permitted on Williamson Act lands. There is nothing in the law or codes that ban second homes on these properties. After thorough investigation, he concluded that the application did indeed conform to both the letter and spirit of AB-1492. He urged the Commission to exert great caution when reading any letter from the State Department of Conservation. He explained that since August, he made another significant concession by agreeing to demolish the 1,200-square-foot guesthouse after the end of the life estate. He noted that since November and since last August nothing has changed on the statutory front. He did not believe he should be compelled to remove his property from the Williamson Act or declare the Vierra Ranch to be his first home. Neither is required under law. He explained that for several years they tried very hard to operate in good faith, to be good stewards of their land and made a string of concessions that were not required by the codes and have not been demanded of any other landowner in West Marin. He agreed to re-site the house at a location far inferior to the preferred spot. He agreed to a shorter driveway as well as agreed to a stiff Easement, which since August has now been made even more punitive. He agreed to grant permanent farm worker housing at below market rates. He agreed to remove several structures. He agreed to work with the Bolinas Community Public Utility District to install fencing along the creek. Also, he is not about to follow what he considered to be a highly unethical suggestion by the CDA to declare Bolinas his first home. He stated that today, January 24, 2005, his application conforms with all the laws and codes that were present in August 2004 when Agency Director Hinds recommended to the Commission approval of this application. He pointed out that nothing has changed since then, and urged the Commission to follow Agency Director Hinds' recommendation from August and approve this project.

Commissioner Berland asked the applicant when he purchased the Vierra Ranch. Mr. Moritz responded that he purchased the property in 1998. Commissioner Berland asked Mr. Moritz if he had legal counsel who assisted him in connection with this purchase. Mr. Moritz responded in the affirmative.

Roger Roberts, representing, Marin Conservation League (MCL), expressed concern for this property being gentrified, being a secondary home and they are not convinced that this house is incidental to the agricultural use of the property as stated in August. Also, in reviewing the documentation as it stands today, it appears that the Agricultural Preservation Easement is basically the same language as before, so many of MCL's remarks that were made in November regarding the efficiency of this documentation still stand. They are concerned about Sections 8 and 9, which relate to the mechanisms for determining whether or not it is feasible to continue agricultural operations and a mediation procedure, which could result in a binding agreement that would eliminate agricultural use on the land. He added that the entire point of the Agricultural Preservation Easement is to maintain agricultural use in perpetuity and it would seem that mediation might subvert that potential. He then made the following recommendations:

- Condition G under Section 2 of Conditions of Project Approval – add the following language: *“that any change in the proposed agricultural use or Agricultural Management Plan shall be subject to a use permit process and reviewed by the Planning Commission, and likewise any amendment to the Agriculture Land Use Preservation and Stewardship Easement Agreement shall also be subject to Planning Commission review.”*
- Exhibit D under Pine Gulch Creek Item 12a – add the following language: *“withdraw and/or extraction of water from Pine Gulch Creek or its tributaries, except for emergency purposes such as fire prevention are prohibited.”*
- Exhibit C - Permitted Uses – MCL reiterated their concern for the language used.

Commissioner Holland asked staff if the Easement must be accepted by the Board of Supervisors. Senior Planner Patri responded in the affirmative. Also, any amendment must go back to the Board as well. Also, an amended Agricultural Management Plan is required if the agriculture changes.

Cela O’Connor, Bolinas resident, discussed BCPUD lands in regard to Condition 24. Senior Planner Patri responded that the applicant is required to be responsible for the Stream Conservation Area Stewardship Plan subject to the review and approval by BCPUD, which is the amendment to Condition 24. Also, if BCPUD required a fence, then the applicant would be responsible for a fence. Ms. O’Connor desired the Commission to address how BPUD lands would be managed through the Agricultural Easement and the Agricultural Management Plan and believed sustainable agricultural livestock practices should be extended to the grasslands beyond the streamside conservation area. Also, she expressed concern for the language under Exhibit C of Item b and asked if there would be additional square-footage allowed to the primary residence in a year or two should the applicant desire to enlarge this home. Senior Planner Patri responded that any additions must come back to this Commission for Coastal Permits and Design Review.

Ms. O’Connor expressed several concerns regarding Item 12 and various prohibited activities within the Stream Conservation Area.

Gordon Bennett, representing the Sierra Club, believed that the 10% to 15% of the agricultural parcels that are without Homeowner’s Tax Exemptions are probably vacant, and some that have more than one residence on them are additional farm worker residences left over from dairy ranching. He believes that very few of the agricultural parcels have second homes and none are proposed for new development of a second home. He further stated that when the County stated that a single primary residence is allowed on agricultural property that did not mean a second home, so the disclosure that this would be a second residence is a fatal flaw and the Sierra Club is concerned with the withdrawal by the Community Development Agency of the condition that it be the owners’ principal residence.

Catherine Caufield, representing EAC, stated that the big picture is to keep West Marin in a rural state to be used for agriculture. EAC thought this was to be the primary residence. Alternatively, she recommended waiting 9 years to complete the Williamson Act non-renewal process. She further noted that earlier today she submitted a letter for the Commission’s consideration that developed some suggestions and modifications.

Douglas Ferguson, Attorney, representing the applicant, noted that he sent an email to staff in regard to their observations on the Easement language and the Easement was dramatically revised by direction of the Commission between August and today. He then desired a few modifications, which he sent to staff as follows: 1) “Costs” should become subsection “(e)” and read as follows: Costs. *“The cost of the mediator shall be allocated by the mediator between the parties in such proportions as the mediator, in the exercise of reasonable judgment, shall determine to be fair;”* Costs of Enforcement: The last word “Grantors” should be replaced with *“parties in such proportion as the tribunal asked to enforce this document, in the exercise of its reasonable judgment, shall determine to be fair;”* Reasonableness. *“Any determination required or permitted to be made by the Grantor or Grantee under this document or any of the Exhibits to be enforceable, shall be required to be reasonable.”*

Commissioner Holland discussed Mr. Ferguson's email in regard to the requested specific changes to the Easement and asked staff to explain. Senior Planner Patri responded that this Commission directed staff to use the MALT easement as the guide. Staff added should down the road an entity like MALT take over the Easement, then Mr. Ferguson's suggested language may not be desirable to that entity.

Agency Director Hinds had no problem with adding words such as "*fair*" or "*reasonable*" to the Easement. Staff desired to establish a model Easement that would be the kind of Easement that a local land trust would be willing to accept, so staff did not enter into the usual back and forth negotiations with the applicant.

Commissioner Berland expressed concern for the word "*reasonable*" and felt that wording could cause certain consequences.

Commissioner Holland clarified with Mr. Ferguson that the other big issue is the non-renewal of the Williamson Act and if that disappears would this be acceptable. Mr. Ferguson responded in the affirmative.

The public hearing was closed.

Commissioner Holland desired legal advice in regard to the non-renewal clause. David Zaltsman, Deputy County Counsel, responded that only the Board could decide to renew or not renew the Williamson Contract. The Commission could make a strong recommendation, but ultimately it is the Board's decision. Agency Director Hinds noted that this Commission could make a finding and a recommendation that the Board pursue non-renewal. Staff stated that under the Williamson Act provisions, the final approval could be appealed to the State Department of Conservation.

Deputy County Counsel Zaltsman noted that the Board or the private property owner did not need a reason for non-renewal. Staff explained that the State Department of Conservation staff felt that this type of residence and this type of situation is not incidental to the agricultural use of this property, so as a compromise, staff would take this property out of the Williamson Act and the only way to do that is through the 9-year period non-renewal process.

Commissioner Dickenson asked why the County would desire to remove the property from the Williamson Act. Agency Director Hinds desired the property to stay in the Williamson Act, but staff recommended removal because after discussing this matter with the State Department of Conservation staff, they continued to be concerned that funding for the Williamson Act may be eliminated, which would result in major impacts up and down the State. They did not want any perception that the State is subsidizing vacation homes, second homes or large homes, even though the house is still appraised at its actual value.

Commissioner Dickenson pointed out that currently the County is reimbursed for the reduced taxes as a result of a Williamson Act contract. Deputy County Counsel Zaltsman did not desire to be in a position of having the State come down on the County for approving projects using the Williamson Act for a purpose for which it was not intended. Staff pointed out that the County could be facing a lawsuit from the State. Agency Director Hinds noted that the State would be responding to appeals and staff did not desire this to be the test case.

Commissioner Barner did not believe the Commission should engage in that kind of fearful double exercise of what might be. Also, the Easement is far stricter than the Williamson Act. Nevertheless, the outcome is preservation of land and farmland, so for all these reasons he is appalled as to why they are talking about non-renewal. He is also very uncomfortable that an Easement agreement was not worked out between staff, the applicant and legal counsel. He did not understand how they could approve a recommendation that was provided today and he is very uncomfortable with the process for this project. He asked if it was possible to take action on having this Easement be reviewed by both parties and then come back to the Commission with an agreement.

Commissioner Berland stated that the applicant is satisfied with the Easement except for the two or three provisions and in order to move forward, he would be willing to withdraw his comments on "*reasonableness*."

Commissioner Julin recommended looking at the big picture. She felt the Easement has become a distraction from the bigger picture, which starts with the preservation of the 84-acres and Countywide Plan preservation policies for the entire County. The County is committed to preserving lands for agricultural use and the core of the project is residential development. She further noted that she is not prepared to participate in a motion about an Easement, but felt the Commission should review land use and the issue of upholding the principles of the Countywide Plan.

Commissioner Berland noted that this project has been ongoing for the last three years and although Mr. Moritz is willing to support agricultural development, Mr. Moritz, knew or should have been advised before purchasing the ranch that the C-APZ Zoning, the Williamson Act Contract and Marin County rules would prevent him from building his country home on this property. He believed these restrictions were known by Mr. Moritz when he purchased the property. He discussed the County's zoning ordinance, the Williamson Contract and Marin County Williamson Resolution, and he did not see how the proposed residential development was directly related to or incidental to the agricultural use, so he cannot make Findings VIII, XI, XIII and XIII (a) and (e). He expressed concern for the last paragraph on page 9 of the staff report concerning staff's inability to maintain a reasonable level or parity between the value of a new residence and agricultural production on agricultural property since in many agricultural properties in Marin, the agricultural operation is economically marginal and the value is in the land. Applying this logic to this property and to others in Marin would gut the provisions of the C-APZ-60 zoning ordinance. Rather than subverting the requirements of the zoning ordinance by going through the back door, he believed the County should face this issue head on and decide whether marginal agricultural properties should be rezoned to another category or the C-PAZ-60 ordinance revised.

Commissioner Dickenson agreed with staff's assessment and the ability to make the findings. He felt this proposal, which is a single-family home, is clearly "*in support of*" continued agricultural use and under the proposal the land would remain in agricultural use. He is satisfied that the streamside conservation issues have been addressed and believes the Easement is strong, and sees no reason whatsoever to remove the Williamson Act restrictions from this property. He further supports staff's recommendation with elimination of Conditions 25 and 26B.

Commissioner Julin reiterated that the core of the project is residential development and it is not about preservation of agricultural. She added that what is occurring is impacting three different communities. In her view, this is not compatible with the existing pastoral quality and would affect the lives of the residents of Bolinas. Also, the existing agriculture of the community would be impacted and she believed agricultural is a very important part of the community. Also, what occurs in West Marin would affect the entire County and she believed the agricultural community is needed and they must be kept strong. She expressed interest in the "*Marin County Agricultural Economic Analysis Final Report*" and discussed the key findings for the Commission's review.

Commissioner Greenberg agreed with Commissioner Berland's analysis and concluded that this proposal is not incidental to agriculture. She recommended softening the inconsistency by requiring non-renewal. She indicated that this property is very small in terms of acreage and its agricultural production abilities is not great and she felt the Easement affords the County some very meaningful benefit and protection of agricultural values. She believed the Easement is more valuable to the County and residents of Bolinas rather than the Williamson Act. She noted that she would not support this without a non-renewal. Also, she is not happy that this is a second home, but because the property is very small and the owner is willing to subsidize some agricultural practice she is willing to not require him to make this his principal residence. She desired to approve this with the non-renewal issue included, take out the Homeowner's Tax Exemption requirement, and allow staff to go back with the input that has already been received from both the applicant and public with specific language changes and make an assessment for what language is useful and appropriate and then submit to the Board of Supervisors

Chairman Thompson asked for a motion.

M/s, Dickenson/Greenberg, that the Planning Commission direct staff to return with a revised Resolution at the next meeting that reflects approval of the project, revisions to the Easement as generally discussed at the

meeting today to be discussed between the applicant, interested parties and staff, with the elimination of Condition 26B.

Commissioner Barner believed they are talking about a residence that is essential to agricultural and without the kind of funds that the applicant has already invested, agriculture would not continue on this site. He expressed concern for the gentrification of lands in Marin, including West Marin. He noted that 25 cattle is the maximum that this land can support as noted by the Marin County Agricultural Advisory Committee, so he felt the applicant should be given credit for supporting the maximum. He stated that the applicant is doing as much as expected to keep this parcel in agricultural production. On that basis, he is supportive of this project. He preferred to not include the non-renewal clause, but he could support the clause in order to move this matter forward. He further believed the Easement must be agreeable to the applicant, but also agreeable to other applicants who desire to do the same and have the same type of agreement to ensure the continuation of agriculture in Marin County.

Commissioner Berland pointed out that the zoning on this property is C-APZ-60, which requires that the single-family development be accessory, incidental to or in support of agricultural land uses and he cannot make Finding XI, so he cannot support the motion.

Commissioner Greenberg expressed concern for the motion in regard to negotiations and desired appropriate language in order to achieve an Easement that staff could submit to the Board. Agency Director Hinds responded that the Easement is there for the Commission as an example, but the Board would approve the Easement, not the Commission.

Commissioner Dickenson modified his motion to specify that the Easement come back for review by the Planning Commission before it goes to the Board and incorporate input from the property owners and from agricultural interests.

Agency Director Hinds noted that the Commission could recommend taking the three suggestions of the applicant by adding the word “reasonable” and “fair cost sharing” and recommend that the Board consider the requests of the applicant.

Commissioner Dickenson then recommended that the Commission express their intent to approve the application and direct staff to come back with a revised Resolution and Easement that also includes staff’s changes in writing to be considered.

Senior Planner Patri reminded the Commission that in the August 23rd staff report there was an Easement drafted and proposed by the applicant and the Commission directed staff to go back and develop a model Easement. Agency Director Hinds suggested that the Commission take a motion on an intended decision where the Commission would basically agree or take action. Chairman Thompson recommended taking a motion of intended decision.

Commissioner Dickenson and Commissioner Barner announced that they would be unable to attend the February 14, 2005, Planning Commission meeting.

Commissioner Greenberg recommended taking a vote that would be firm with some possible language adjustments.

Commissioner Holland desired a test case, but not on the Williamson Act because the Williamson Act is not very significant in this case. He felt there are real Coastal Commission issues concerning “*incidental, accessory and in support of,*” which are so vague. He desired to know what comments the County received from the Coastal Commission on these types of projects. In this particular case, given the limited agricultural capabilities of the parcel and this Easement, it is a perfect case to let the Board find out what the Coastal Commission will do. He stated that he would support Commissioner Greenberg on this matter and supported non-renewal because the Board would make the final decision. He further noted that he could support the findings.

Commissioner Julin announced that she cannot support the project as proposed and could not support the motion.

Commissioner Holland submitted corrections to staff in regard to the Resolution.

Commissioner Dickenson modified the motion that staff return with revisions to the Resolution and Easement based on the input received today.

Chairman Thompson conducted a roll call vote of the motion with Commissioner Berland and Commissioner Julin opposed. Motion passed 5/2.

Chairman Thompson asked the applicant if he would agree to a continuance. Mr. Moritz agreed.

M/s, Dickenson/Greenberg, that, with the applicant's consent, the Planning Commission continue the application to the February 28, 2005, Planning Commission meeting and that staff prepare a revised Resolution. Motion passed 7/0.

Chairman Thompson adjourned the Planning Commission meeting at 6:15 p.m.