

MARIN COUNTY PLANNING COMMISSION HEARING MINUTES

March 14, 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
Ben Berto, Principal Planner
Christine Gimmmler, Senior Planner
Nancy Grisham, Deputy County Counsel
Eric Steger, Department of Public Works, Senior Engineer
Jessica Woods, Recording Secretary

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

Convened at 1:09 p.m.
Adjourned at 4:18 p.m.

INITIAL 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. Review and Comment on Revised Moritz Agricultural Conservation and Production Easement**

Commissioner Dickenson felt it is premature and inappropriate to discuss the Easement at this time. His intent from the motion at the last meeting was that when the Commission knows if this project would even be approved and when the Commission knows what the conditions of approval are, then the Commission could review the Easement rather than bringing the matter back for another round of discussion. He believed it made no sense to discuss the Easement today. He added that he would reserve his right to comment when he knows whether the project is approved and what the conditions of approval are.

Alex Hinds, Agency Director, understood the intent of the Commission was to review the matter at a later date. However, the reason he agreed to discuss the matter today is that when items go to the Board of Supervisors on appeal the Board could act on both the appeal and Easement, so it seemed more efficient to do it all at once. He further noted that in his view, the Commission should not be commenting on this matter at all at this time because of the appeal.

Brian Crawford, Deputy Director, announced that the hearing on the appeal may be before the Board within the next four or five weeks.

Commissioner Holland stated that his understanding of the motion at the last meeting was that the Commission would get a chance to discuss this matter before it was forwarded to the Board, so that the Board would be forwarded the appeal plus the Commission's best shot at a recommendation on the accompanying Easement. He thought both the appeal and Easement would be forwarded to the Board at the same time, and if that was not the case, he would not have voted in favor of the motion at the last meeting.

Agency Director Hinds responded that staff could provide a better notice that identified there would be a Planning Commission discussion of the Easement in the next couple of weeks in order to address that issue before it went to the Board rather than discussing the matter today due to insufficient notice.

Commissioner Berland believed this Easement is the most important issue in regard to this application and the Commission must make sure that it is worth this type of a bargain because it will be a template for other agricultural properties when sold. Therefore, he agreed with Commissioner Dickenson that more time is needed and the Commission should wait until conditions are established and then work on the Easement. He further indicated that the matter should not be rushed because it is very important.

Commissioner Greenberg agreed with Commissioner Holland and felt they must understand the Easement in order to approve the project.

Commissioner Julin did not feel the project could be approved before details of the Easement are worked out and continuing the matter would be fair to the public in order to review the changes.

Commissioner Barner had mixed emotions in regard to this issue and pointed out that it is not a matter for the Commission to approve. He agreed that the public should have sufficient time to review the changes since it was agendized. He further did not believe any discussion today would move the matter forward, so he recommended continuing the matter to the next meeting with adequate public notice.

Chairman Thompson recommended that this matter be continued to the March 28th, 2005 Planning Commission meeting. He then advised members of the public that their input would be more effective on the meeting of March 28th, 2005, but if they desired to speak, the Commission welcomed their comments.

Chairman Thompson asked for a motion.

M/s, Greenberg/Holland, to continue the matter to the March 28th, 2005 Planning Commission meeting.

Commissioner Dickenson reiterated his concern that discussing the Easement at the next meeting is still premature because there are several levels of appeal before the Commission would know whether or not the project is approved on this property as well as the conditions of approval. He stated that there is a logical sequence of planning approval and that is that all the details are not required upfront. He stated that the Easement is an important part of the approval, but this is detail that should be subject to public review and discussion before it goes to the Board and the Easement as written now should clearly state "*draft subject to review and revision*" because the Commission did not act on it. He noted that at the last meeting the Commission made comments, but no action was taken on the Easement. He felt it is a waste of the Commission's time to discuss the wording of an Easement when the Commission has no idea if the project would be approved on appeal.

Agency Director Hinds believed this matter should be left to the Board, but appreciated and respected the Commission's desire to provide additional input.

Motion passed 6/1 (Commissioner Dickenson opposed).

The hearing was opened to the public.

Gordon Bennett, representing, Sierra Club, agreed to come back at the next meeting, but he also encouraged the Commission to work with staff in order for the public to review the document at its final stage. He further provided the Commission with a letter for their review.

Roger Roberts, representing, the Marin Conservation League, noted problems contained in the documentation as follows: the Resolution stated that the building permits are subject to acceptance and recordation of the easement and written notice of non-renewal of the Williamson Act, but the Easement language itself allows the baseline data reports to be filed up to a year after the Easement is recorded; it allows the Agricultural Production Stewardship Plan to be submitted three months after recordation of the Easement; the Streamside Conservation Area and Stewardship Plan can be done sometime during the building process but before final inspection and recordation of the agricultural workers deed also can be delayed until final inspection, which is after ground had been broken. He further believed it would be wise of the County to make sure that all this documentation occurs before any ground is broken and any permit is issued.

Douglas Ferguson, attorney, representing, Moritz, thought it was a routine matter today and encouraged the Commission to read the Minutes as well as listen to the tapes in regard to the February 28, 2005, motion in order to understand that this review would take place down the road rather than today. He further noted that this matter should not be discussed today or next month.

Cela O'Conner, Marin resident, objected to the application. She wanted to know if the notice for exemption dated July 19th, 2004 still applies to the documents because it is not consistent with the Resolution or the Easement and believed this is a convoluted mess. She desired the BCPUD lands to be protected by the entire 100-foot wide SCA rather than a minimum 30 feet. She further pointed out that all changes must be consistent. Chairman Thompson encouraged Ms. O'Connor to submit her comments in writing.

The hearing was closed to the public.

Commissioner Holland felt that what the Commission planned on doing today and what would take place at the next meeting is to ensure conformance and not reopen debate about any issue or new areas. Agency Director Hinds responded that the Commission took action on the permitted entitlements and added a condition to one of the entitlements that the Commission desired to provide their comments on the Easement to the Board. He agreed that there would be no changes to the prior action, but this would be the opportunity to provide recommendations to the Board about the Easement, which is connected to the project.

Commissioner Greenberg noted that some changes still must be made to the Easement and the changes must reflect what the Commission intended to have placed in the Easement. Agency Director Hinds responded that staff would provide the Commission's recommendations to the Board in regard to the Easement.

Chairman Thompson announced that the Commission would take a short recess in order to provide audience members with copies of the Minutes in regard to the Moritz project.

Mr. Ferguson expressed confusion in regard to what is occurring. Commissioner Dickenson noted that Condition 22 states, "*Prior to issuance of the building permit for the new residence, the Moritz Deed of Agricultural Conservation and Production Easement and Declaration of Restrictions (Easement) shall be reviewed by the Planning Commission and accepted by the Marin County Board of Supervisors and recorded by the County.*" He explained that is the wording that was adopted and the wording is left to interpretation as to whether it happens now or after the Board approves the project and the majority of the Commission desired to do it now. Agency Director Hinds agreed to carefully review the language regarding the Commission's action on the Easement.

c. Approval of Minutes – February 28, 2005

M/s, Holland/Julin, to approve the Minutes of February 28, 2005, as amended. Motion passed 7/0.

2. COMMUNICATIONS – The Commission acknowledged several pieces of correspondence for their review.
3. DIRECTOR'S ORAL REPORT

Budget Priorities for FY 2005/2006

Agency Director Hinds summarized the Budget Goals and Key Program Initiatives and recommended that the Commission review the revised goals and initiatives within the context of the complete Department Performance Plan and approve them with further revisions if determined appropriate. Agency Director Hinds noted that he neglected to include under Programmatic Objective 2 the request for an assistant/planner to help the Environmental Planning Coordinator in regard to additional CEQA analysis.

Chairman Thompson noted that Supervisor McGlashan is discussing a revision of TAM Valley Community Plan in regard to the CTMP project and asked staff to think about that fact. Agency Director Hinds responded that staff would establish a priority list with the Board as well as report twice a year to the Commission and Board on the progress of programs on the list. Also, every two years, staff would review the priority work program.

Commissioner Holland noted confusion in regard to PC Attachment 2 in regard to the use of the words "*Planning Commission*" because the Planning Commission did not deal with budget or initiation. He did not believe this section should be assigned to the Commission. Deputy Director Crawford responded that the exercise is an annual process and in past years staff has brought forward a bullet

point list of budget goals for the Commission's review and approval. This year, in keeping with the more expanded budget process, the CAO's office requested that all Boards and Commissions develop an extensive list of budget goals that included long-term and short-term initiatives and then asked Agency staff of those Boards and Commissions to deliver the approved recommendations to the CAO's office.

Commissioner Holland reiterated his concern for items having dollar signs. Agency Director Hinds recommended changing the heading to "*Goals and Key Initiatives*" and removing the word "*Budget*."

Commissioner Julin stated the entire review process came out of the Committee several years ago called, "*Budget Process Committee*" and one suggestion she made was that the different Commissions and decision-making bodies be brought into the process because they would be in a good position to support staff. She explained that the Commissions or Committees would not develop the budget, but support staff's request or recommendation as well as add some of their own programs. She further pointed out that it was not to control budgets, but bring the Commissions, Committees and Board into the budget loop.

Commissioner Holland commented on page 8 of the first document in regard to pursuing development of a County Service Area with septic responsibilities and expressed concern for confining the study to the East Shore project. Agency Director Hinds responded that the East Shore project is the pilot project. Once completed successfully, staff desired to expand this throughout the County.

Commissioner Holland expressed concern for adequate working space for staff not being addressed. Agency Director Hinds responded that space is a separate process and the current planning staff has very nice workstations. Staff felt this building serves as an employee growth management system. Also, there is discussion about the need to send more staff members to 65 Mitchell as well as telecommunicating in order to share workspace.

Commissioner Dickenson expressed concern for PC Attachment 2 because it lacks reference to protection of environmental resources, which is Goal 1 of the Department list. He requested that the language be added to the Planning Commission's document. Also, there is no reference in the bullet items in regard to processing planning applications for consistency with environmental and land use policies and desired some reference to processing applications. Agency Director Hinds agreed to amend the document so the Commission would be making recommendations on the entire Performance Plan, but limited to factors that would affect the Commission. In regard to a theme, it would be back to basics in regard to staff resources, permit tracking, and customer service improvements that will allow items to move quicker, but without lessening the quality. Staff also agreed to add all the applicable goals as well.

Commissioner Greenberg shared discomfort with the budget aspect because she did not have information to make any judgments. She discussed page 9 in regard to pharmaceutical return program and asked staff to explain. Agency Director Hinds pointed out that it is a relatively new program. Commissioner Greenberg believed this new program needs work because the public has no idea of their options. Staff agreed.

Commissioner Greenberg discussed page 11 and asked staff to explain housing impacts. Agency Director Hinds responded that staff is trying to form a nexus showing that larger homes impact affordability of other housing.

Commissioner Greenberg commented on page 14 in regard to the fourth bullet and asked staff for the objective of such workshop with key stakeholder groups. Agency Director Hinds responded that the objective is communication and staff desired to meet once a year with key groups.

Commissioner Barner appreciated the additional material, but expressed concern for the programmatic objective of outreach programs in regard to Goal 6. He believed the front counter sets the stage for the entire process, and felt this report should emphasize that type of process and the need for intelligent and energetic individuals managing that approach as under Goal 6. He further believed that staffing of that desk is much more important than brochures. Agency Director Hinds believed another person is needed to make sure all the front counter operations run properly and smoothly. Staff desired to have fewer individuals who were well trained and seasoned in order to have improved customer service.

Chairman Thompson noted that he walked into the San Mateo Planning Department and received very good treatment. Agency Director Hinds believed a staff road trip of other Counties doing a good job would be beneficial.

Commissioner Julin discussed the chart and struggled to find the seven divisions and noted that the general rule of thumb is to have three people reporting to one person. Agency Director Hinds noted that there are three major divisions and he desired a Deputy Director for all three and a Chief Assistant Director for the Agency. Commissioner Julin agreed and felt it made complete sense and would simplify matters.

Commissioner Berland recommended having a program of preserving the agricultural heritage of West Marin. Commissioner Julin agreed. Commissioner Berland also recommended reserving or make available affordable housing units to employees. Agency Director Hinds recommended encouraging employees to have housing nearby, but in regard to public agencies there are other folks that care about discrimination and fair housing, so the minute the County or public agencies try and limit housing to people who work for or in the County, then the County would receive challenges. Also, there is not a separate major agriculture initiative. Deputy Director Crawford noted that included in the Countywide-planning document are programs aimed at protecting agriculture including the idea of developing and adopting a more restrictive agriculture zone along with other programs to protect agricultural land and production. Commissioner Berland recommended reviewing the ARP zones and for non-productive agricultural areas perhaps a special agricultural zone should be considered, so he recommended a new category of agricultural land in West Marin, which is not agriculturally feasible such as the Moritz property. Deputy Director Crawford noted that the Countywide Plan update also includes a program for re-evaluating ARP-zoned properties to determine if a more protective agricultural zoning district would be appropriate.

Commissioner Holland suggested not pursuing the second document, but as a Commission, endorse and support the entire Agency's entire set of Budget Goals and Key Program Initiatives. The Commission and staff agreed.

Chairman Thompson asked for a motion.

M/s, Holland/Julin, to endorse and support the CDA's plan for 2005-2006 as outlined by staff and discussed. Motion passed 7/0.

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

5. FUTURE AGENDA DISCUSSION ITEMS, FIELD TRIPS

March 28, 2005

- Revised Moritz Agricultural Conservation and Production Easement

- Residential Design Guidelines

April 11th, 2005-

- Champ Floating Home
- Appeal of Design Review in Sleepy Hollow

Proposing to construct a new, two-story 5,915 square foot residential compound consisting of: a 24.5 foot tall, 3,640 square foot residence with an attached, two-story, 28 foot tall (plus 4-foot cupola), 2,719 square foot garage/barn/storage area, on a vacant 28-acre lot. The building site on a grassy knoll at elevation 955', and has approximate minimum setbacks from respective property lines as follows: 400 feet from the front (south), 87 feet from the side (west), 368 feet from the side (east), and 430 feet from the rear (north). The residence would be served from Old Rancheria Road by a gated, approximately 400-foot long, 12-foot wide driveway with a circular turnaround. Staff withdrew the application because the applicant has not responded to redesign direction given by the Planning Commission on August 5, 2002. The appellant is claiming that the project is deemed approved by operation of law, and there is no legal or factual basis for withdrawal of the application. The subject property is located at **1675 Old Rancheria Road, Nicasio**, and is further identified as **Assessor's Parcel 121-250-53**.

Ben Berto, Principal Planner, summarized the staff report and recommended that the Commission deny the Krane appeal and uphold the staff withdrawal of the Krane Design Review application for a new primary single-family residential compound in Nicasio.

Commissioner Holland asked staff to discuss the 60-day provision for resubmittal of applications that have been withdrawn. Principal Planner Berto responded that in the fee schedule it is noted that when the County withdraws an application it may allow an applicant to reapply for that application without any new fees being paid if the resubmittal is made within 60 days of withdrawal.

Commissioner Dickenson noted that it was not clear which parcels were included in the Williamson Act Contract. Principal Planner Berto responded that included in the memorandum dated March 14th there is a discussion of assessor's parcels included in the Land Conservation contract. The current applicant's parcel is APN 121-250-53, which was formerly APN 121-250-43 that was referenced in the original Williamson Act Land Conservation Contract.

Nancy Grisham, County Counsel, reviewed the documentation and made a few changes to the findings, which she would read into the record when the Commission desired.

The hearing was opened to the public.

Paul Buck, Nicasio resident, opposed the project and urged the Commission to stand firm and enforce existing policies and procedures. He objected to the proposed location of the home, which would not only impact his property, but surrounding properties. He believed this project is unnecessarily visually obtrusive and expressed concern for future applications. In regard to the word "*Guideline*," he referred to the American Heritage Dictionary 4th Edition and read the definition of Guideline into the record for the Commission's consideration. He further urged the Commission to be strong, stand firm and draw the line on this application today.

Chairman Thompson asked the appellant if he desired to make a presentation and the appellant's attorney, Neil Sorenson, declined.

The public hearing was closed.

Commissioner Dickenson asked staff how long the County has used the "*deemed withdrawn*" process for applications. Deputy Director Crawford responded that based upon his recollection, this particular administrative practice has been employed since at least the late 1980s or early 1990s.

Commissioner Berland stated that the statute for permit streamlining process is to penalize a governmental entity from sitting on an application or taking too much time to process the application. If the Country did not take action within a reasonable period of time the County has deemed to approve it. In this case, the applicant asked for an

extension of time beyond this period of time. There is a doctrine called “estoppel” and in the old English law it was said that when someone claims something contradictory to what he or she requested before, it does not lie in his or her mouth to object or claim a right, which he or she voluntarily gave up. The purpose of the permit streamlining law is also to provide the public with notice of an approval of a project so that the public may appeal a project. He stated that whether called “waiver” or “estoppel” there is no merit to this appeal and agreed with the denial.

Commissioner Dickenson indicated that he would deny the application. Commissioner Holland concurred and expressed his disappointment that the appellant has chosen not to speak. Commissioner Holland then asked Deputy County Council Grisham to discuss her amendments proposed for the Resolution in order to move forward.

Deputy County Counsel Grisham proposed the following modifications to the findings: I – insert the phrase “*in regard to the original project*” after the word “whereas;” II – insert the phrase “*as originally designed*” after the word, “*project;*” III – add the following sentence at the end: “*The Planning Commission indicated it was ready to deny the project as designed, but offered the applicant an opportunity to redesign the project at a later date;*” XI – strike the first sentence from paragraph “A” and insert the following language: “*On August 5th 2000, the applicant when informed that the majority of the Planning Commission was poised to deny the application agreed on the record to redesign the project and work with staff to bring such redesigned project to the Commission at a later date. Therefore, the matter was continued at the request of the applicant. By handling the matter in this manner it enabled the applicant to avoid paying duplicate fees;*” Insert the following at the beginning of the second paragraph of “A”: “*The applicant does not qualify to have either original design nor the discussions and activity concerning redesign be approved by operation of law. Based upon written and oral communications by representative of the applicant at no time has the County received any written or other communication in regard to reactivation of the original application;*” Strike the following from the second paragraph under “A”: “*If they had communicated to staff, or provided public notice of the continued hearing, this would have put the County on notice to act on this application or have it deemed approved. The County would have promptly (e.g., within the applicant’s notice timeframe) noticed, heard, and acted on the application, since doing otherwise would have abrogated the County’s decision-making responsibilities and authority.*” Strike the word, “*instead*” from the third paragraph under “A” and strike the rest of the sentence after the word “*activities;*” Strike the words, “*they are*” and insert “*applicant*” and insert the word, “*is*” after the word “*now*” and add the words, “*former statement*” after the word “*their*” striking the rest of the sentence in regard to the third sentence of the third paragraph under “A” to read, “*Applicant now is apparently attempting to renege on their former statements;*” and Strike the word “*is*” after the word, “*County*” from page 3 under paragraph “B.”

Commissioner Greenberg noted a typo on page 2 of the fourth line in regard to the fourth paragraph and recommended deleting the second “*were.*” Commissioner Holland pointed out that “*Section V on page 3*” should be “*Section III.*”

Commissioner Dickenson noted that page 2 should state, “*withdrawal of the application*” rather than “*the applicant.*”

Chairman Thompson asked for a motion.

M/s, Holland/Berland, to adopt the Resolution denying the Krane Appeal and upholding the withdrawal of the Krane Design Review subject to the amendments proposed by Counsel and Commission.

Commissioner Barner expressed concern as to why the applicant did not make a presentation and noted his disappointment.

Motion passed 7/0.

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. PC 05-004

A RESOLUTION DENYING
THE KRANE APPEAL AND
UPHOLDING THE WITHDRAWAL
OF THE KRANE DESIGN REVIEW
1675 OLD RANCHERIA ROAD, NICASIO
ASSESSOR'S PARCELS 121-250-53

SECTION I: FINDINGS

- I. WHEREAS, in regard to the original project, Carol Krane requested Design Review approval to allow to construct a new, two-story 6,359 square foot residential compound consisting of a residence with an attached garage/barn/storage area on a vacant, 28-acre lot. The building site is on a grassy knoll on a spur ridge at elevation 955', and has approximate minimum setbacks from respective property lines as follows: 366 feet from the front (south), 87 feet from the side (west), 368 feet from the side (east), and 447 feet from the rear (north). The parcel would be served from Old Rancheria Road by a gated, driveway. Two 5,000-gallon water tanks are proposed, located approximately 10 feet from the front property line adjacent to Old Rancheria Road. Utilities to the building would run underground from Old Rancheria Road. Sewer would consist of a septic system. The subject property is identified as 1675 Old Rancheria Road, Nicasio, and is further identified as Assessor's Parcel 121-250-53.
- II. WHEREAS, the Planning Commission held a duly noticed public hearing on August 5, 2002, to consider the merits of the project and hear testimony in favor of, and in opposition to, the project as originally designed.
- III. WHEREAS, the Planning Commission consensus at their August 5, 2002, public hearing was that the proposed project is inconsistent with the Countywide Plan and the Nicasio Valley Community Plan policies on visual qualities and views, fill, impact on mature trees, ridgeline development, and building location, size, and bulk, and that the proposed project is inconsistent with the findings for Design Review for the ARP zoning district because the project has not been located in the least visually prominent portions of the site, does not adequately avoid development on a ridgeline area, or responds to neighbor's concerns, resulting in the Planning Commission's inability to take action to approve the project as proposed. The Planning Commission indicated it was ready to deny the project as designed, but offered the applicant an opportunity to redesign the project at a later date.
- IV. WHEREAS, at the applicant's request, the Marin County Planning Commission unanimously approved a motion to continue the Krane Design Review to the October 21, 2002, hearing date to allow the applicant time to revise the project to address concerns expressed by the Commissioners.
- V. WHEREAS due to the written request by the applicant, the hearing was further continued to the November 18, 2002 hearing, then due to a verbal request by the applicant, the hearing was continued to a date uncertain.
- VI. WHEREAS the applicant, her representatives, and staff held several meetings, site visits, submitted revised design drawings, and otherwise communicated on the subject of redesign options for the house up to January 2003.
- VII. WHEREAS, despite written staff direction in June 2004, the applicant has been non-responsive in pursuing redesign and resubmittal of the project.
- VIII. WHEREAS, a Notice of Withdrawal of Application was sent to the applicant and her representative on January 7, 2005.

- IX. WHEREAS, the applicant's legal counsel filed a timely appeal of the withdrawal of the application.
- X. WHEREAS, the Marin County Planning Commission held a duly noticed public hearing on March 14, 2005, to consider the merits of the appeal and hear testimony in favor of, and in opposition to, the appeal.
- XI. WHEREAS the Marin County Planning Commission finds that the appeal is without basis because:
- A. On August 5, 2000, the applicant when informed that the majority of the Planning Commission was poised to deny the application agreed on the record to redesign the project and work with staff to bring such redesigned project to the Commission at a later date. Therefore, the matter was continued at the request of the applicant. By handling the matter in this manner, it enabled the applicant to avoid paying duplicate fees. In this case, the applicant agreed to a continuance from the Commission's August 5, 2002, hearing (see attachment 5.) The applicant's architect on two subsequent occasions specifically requested that the project be removed from the Planning Commission agenda on which it had been placed. The last continuance requested by the applicant's architect placed the project outside the 90 days continuance timeframe. However, staff reasonably believed that the applicant, through her architect, was actively working on their project. Staff is reluctant to interpose a technical formality (scheduling the application for denial) when it would penalize (e.g., by requiring a new application submittal with new plans and fees) an applicant who is actively attempting to move a project forward.

The applicant does not qualify to have either original design nor the discussions and activity concerning redesign be approved by operation of law. Based upon written and oral communications by representative of the applicant, at no time has the County received any written or other communication in regard to reactivation of the original application. Neither the applicant nor any representatives have at any time written or otherwise communicated to the County that it must provide notice of a hearing and/or render a decision on the application. In fact, quite the contrary has occurred. Nor has the applicant or her representatives ever announced any intention to provide their own public notice of the continued hearing, or provided such notice, despite having agreed, in their repeated request for hearing continuances, to a hearing for which public notice is provided.

The applicant and applicant's representatives actively conducted redesign-related activities. Following that, they did not respond to the County's attempts to ascertain the applicant's intentions with respect to the project. Applicant now is apparently attempting to renege on his former statements. It is disingenuous at best, and completely counter to the intent of applicable State statutes (which is to require government agencies to process development applications in a reasonable amount of time), to assert that the County has been remiss in not acting within applicable statutory timelines. Any delays have been either at the direct request of the applicant or as a result of their inactivity.

Subsequent to the August 5, 2002 Planning Commission hearing, staff was informed by the applicant's real estate agent that this property is governed by a Williamson Act contract. It has since been determined that this and an adjoining property are governed by a single Williamson Act contract. These property restrictions were unfortunately previously unknown to planning staff, but either should have been known to the applicant, or could provide a basis for redress between the applicant and the former property owner. Under the County's adopted policies for Williamson Act governed property, only one primary residence is allowed per each contract-governed piece of land. A primary residence is already located on the adjoining parcel under the same contract, thus no additional primary, independent residence such as this project would be permitted. This conflict could reasonably and foreseeably have a direct cumulatively significant environmental impact on land in the County under similar Williamson Act contractual arrangements. Thus the project necessitates a determination that the project is not exempt from processing under the California Environmental Quality Act (CEQA). Given this determination, CEQA Section 15109 (tolling of time periods for approval) applies because the project sponsor (applicant) has ceased to cooperate in providing information necessary for the processing of the application.

B. The County has legal and factual bases for withdrawing the application. As a long-standing administrative practice, the Community Development Agency has used withdrawals of applications to remove stalled/abandoned applications from the County's workload. The withdrawal process recognizes that there are applicants who, for whatever reason, have functionally abandoned their projects. It would squander scarce staff resources to go through the formal process of denying applications when applicants, by their lack of action and progress, have already demonstrated that they do not intend to proceed with their project. In this instance, the County acted to withdraw the application because the applicant, despite Planning Commission direction on their application, has for over a year been non-responsive in furthering the application. This is despite repeated attempts by staff to first place the project on a Planning Commission agenda for a decision, and then elicit any response from the applicant or her representatives regarding the project. Aside from the recent appeal, there has been no communication for months on this application from the applicant or any representative to the project planner.

XII. WHEREAS the Marin County Planning Commission finds that this project's time periods for review under the requirements of the California Environmental Quality Act (CEQA) have been suspended pursuant to Section 15109 because the applicant (project sponsor) has ceased to cooperate in providing information necessary for the processing of the application, and potentially significant cumulative impacts can be reasonably inferred by the project's conflict with the County's adopted policies on the Williamson Act.

NOW, THEREFORE, BE IT RESOLVED that the Marin County Planning Commission hereby denies the appeal of the withdrawal and upholds Director's withdrawal of the Krane Design Review (DR 00-25).

SECTION II: APPEAL RIGHTS

NOW, THEREFORE BE IT FURTHER RESOLVED that this decision is final unless appealed to the Marin County Board of Supervisors. A Petition for Appeal and a \$700.00 filing fee must be submitted in the Community Development Agency - Planning Division, Room 308, Civic Center, San Rafael, no later than 4:00 p.m. on March 24, 2005.

SECTION III: VOTE

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin, State of California, on the 14th day of March, 2005, by the following vote to wit:

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

NOES:

ABSENT:

STEVE C. THOMPSON, CHAIRMAN
MARIN COUNTY PLANNING COMMISSION

Attest:

Jessica Woods
Recording Secretary

Proposing to build a new floating home on the existing barge located in Berth 16, A Dock, in the Waldo Point Harbor Marina. Floating Home Adjustment approval is required because the existing barge is 25 feet wide and 69 feet, 4-inches long, where a maximum barge dimension of 20 feet by 46 feet is allowed pursuant to Marin County Development Code Section 22.32.075. In addition, the proposed floating home would attain a maximum height of 19 feet, 1/2-inch above the waterline, where a height of 16 feet is permitted pursuant to Marin County Development Code Section 22.32.075.B.b. As proposed, the structure would contain 2,675 square feet of living area (including a 1,493 square foot lower level and a 1,182 square foot upper level) with 311 square feet of exterior deck area on the upper level. The subject property is located at **16 A Dock, Waldo Point Harbor**, and is further identified as **Assessor's Parcel 901-040-16**.

Christine Gimmler, Senior Planner, summarized the staff report and recommended that the Commission continue the item to April 11th at the request of the applicant. Staff pointed out that the project was noticed for this meeting, so staff suggested taking testimony from those who could not attend the recommended continued hearing date of April 11th.

Commissioner Dickenson noted for the record that the Commission received an email indicating that the applicant requested a continuance, and based on that, he did not read the staff report or visit the site, so he is not prepared to consider this matter today and encouraged those in the public, if possible, to come back and make their comments on the 11th of April. Agency Director Hinds believed those in the public would be better served speaking on the date of the actual hearing. However, under the Brown Act, any person desiring to speak has three minutes.

The hearing was opened to the public.

Ann Duwall, Marin resident, submitted a letter to staff that was signed by others opposed to this project and supported staff's recommendation. She expressed concern for the new proposed height and new square-footage. She requested that the Commission uphold the code that was established in 1980 to keep the size of the houseboats small and within the County's code. She further reiterated that she supports staff's recommendation to deny this permit. She then provided staff an overlay drawing for their review.

Sally Champe, owner, explained that she did not receive the staff report or official notification of this hearing until last Monday (March 7th), so she was not able to respond and that is why she is asking for the continuance in order to have additional time to prepare a response.

The public hearing was closed.

Chairman Thompson asked for a motion.

M/s, Dickenson/Holland, to continue the public hearing on this matter to the meeting of April 11th, 2005.

Commissioner Barner asked staff if story poles would be erected. Senior Planner Gimmler responded that based on staff's recommendation for denial of the project, staff did not urge the applicant to erect story poles. Commissioner Greenberg stated that it would be in the applicant's best interest to erect story poles if she felt it would help to make her case in regard to height and mass.

Motion passed 7/0.

Chairman Thompson adjourned the Planning Commission meeting at 4:18 p.m.