

**MARIN COUNTY PLANNING COMMISSION HEARING MINUTES**

**March 28, 2005**

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

*Commissioners Present:* Steve C. Thompson, Chair  
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  
Thomas Lai, Principal Planner  
Christine Gimmler, Senior Planner  
Eric Steger, Department of Public Works, Senior Engineer  
Johanna Patri, Senior Planner  
David Zaltsman, Deputy County Counsel  
Dan Hillmer, Architect/Consultant  
Jessica Woods, Recording Secretary

*Minutes Approved on:* *April 11, 2005*

Convened at 1: 04 p.m.  
Adjourned at 4:58 p.m.

1. 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. Continuances

- c. Approval of Minutes – March 14, 2005

*M/s, Holland/Julin, to approve the minutes of March 14, 2005, as amended. Motion passed 7/0.*

2. COMMUNICATIONS – The Commission noted several pieces of correspondence for their review.

Alex Hinds, Agency Director, noted that staff intends to provide more summary minutes in the future. Chairman Thompson recommended agendaing this discussion for the next meeting. Staff agreed.

3. DIRECTOR'S REPORT

- a. Update on Board of Supervisors Actions

Agency Director Hinds noted that the Board would be having a budget meeting to discuss the Community Development Agency's budget on Wednesday, March 30, 2005.

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

Agency Director Hinds announced that offices at the San Rafael Rock Quarry have been moved off site.

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

5. FUTURE AGENDA DISCUSSION ITEMS, FIELD TRIPS

**April 11, 2005**

- Appeal of Fitzpatrick Design Review – 27 Martling, San Anselmo
- Champe Floating Home – Continued from March 14, 2005

**April 25, 2005**

- King Design Review Appeal
- Sorroko Final EA (Adopt)
- Single Family Residential Design Guidelines

Public hearing to consider the March 2005 Revised Public Review Draft Single Family Residential Design Guidelines manual (Design Guidelines). The Design Guidelines are intended to establish clear and comprehensive design recommendations for single-family residential development located within the unincorporated communities of Marin. The Design Guidelines are especially relevant to development proposals that are subject to the County's Design Review process by supplementing and reinforcing the findings and criteria used by the County to issue decisions on Design Review applications. In general, the Design Guidelines consist of general guidelines that apply to all single-family residential development, as well as additional guidelines that apply to hillside areas.

Alex Hinds, Agency Director, summarized the staff report and recommended that the Commission: 1) review the proposed March 2005 Revised Public Review Draft Single-Family Residential Design Guidelines; 2) allow public input on the document; 3) provide staff with direction regarding any further revisions; and 4) continue the public meeting to April 25, 2005, to consider adopting a resolution recommending approval of the Design Guidelines by the Board of Supervisors.

Commissioners Berland, Holland, and Greenberg submitted their comments in writing for staff's consideration. Chairman Thompson also noted several typos that occur throughout the document that must be addressed.

Commissioner Dickenson believes that the document needs major editing and asked staff if the edited version would come back to the Commission for review. Agency Director Hinds indicated he hoped to forward a clean version of the document to the Board, and complete the editing and formatting at a later date. Commissioner Dickenson indicated that the formatting should be revised in order for this to be a user-friendlier document. He hoped a more substantial reorganization and reformatting would occur, and if this is the last chance for Commission review, he would be reluctant to move it forward.

Chairman Thompson agreed with the need to have a user friendly document.

Commissioner Julin stated that this document would be much more useful if it were reduced to half its size. She did not desire to review it again, because additional edits would occur, and recommended moving forward today.

The hearing was opened to the public.

Scott Tye, representing the Stinson Beach Association, expressed concerns related to the application of this document to single-family dwellings in the coastal zone and the time of the Local Coastal Plan update process. Agency Director Hinds responded that the Countywide Plan and this document would go out first, and then staff would address the LCP.

Barry Evergettis, representing Kent Woodlands POA, commended the County and staff, as well as volunteers involved in this process, and noted Kent Woodlands POA's support for the guidelines. He also supported stronger tree preservation standards.

James Raives, representing the Marin County Open Space District, submitted a letter for the Commission's review that recommended that the guidelines encourage the use of non-invasive plants and include an appendix that identifies invasive species of particular concern for this area. He also requested that the guidelines be modified to state that, where feasible, the house should be located in a manner that the defensible space needed for fire protection does not encroach on the land owned by the Open Space District.

Margaret Zegart, Mill Valley resident, submitted her comments and suggestions in regard to the Draft Single-Family Residential Guidelines for the Commission's consideration, which were briefly discussed.

The public hearing was closed.

Commissioner Holland agreed with Mr. Raives in regard to defensible space for fire protection. He also noted that some comments heard today are not related to this document.

Commissioners Dickenson and Julin agreed with Mr. Raives' suggestion and noted that defensible space should not encroach on neighboring properties.

Commissioner Dickenson noted inconsistencies on page 14 related to streamside conservation areas. He believed the map on page 16 is very confusing and should be modified, and recommended developing a better graphic indication of the conservation zone. Also, the tree preservation chapter is very confusing and the language should be modified. Mr. Hillmer responded that he hoped to refer to the ordinance for detail. Commissioner Dickenson felt the guidelines should encourage protection of all heritage trees whether or no they are protected by the current Ordinance.

Commissioner Dickenson commented that the diagram at the bottom of page 39 should be deleted because it is used elsewhere.

Commissioner Greenberg commented that the recommendations for new standards on page 3 should not be included in this document for public review. Commissioner Dickenson pointed out that the same matter is discussed on page C1 of the appendix. Agency Director Hinds stated that at the end of the document a section entitled "*Recommended Future Changes*" could be included to conceptually point out recommended development code changes. Commissioner Dickenson felt it is a good idea to develop areas for future consideration in order to highlight areas of possible change.

Commissioner Barner indicated that the document should address Marin's unique communities and should not be reduced to the point that it is too general. Mr. Hillmer indicated that specific guidelines are being established that would apply to specific areas. Agency Director Hinds stated that these guidelines are meant to be the general principles that can be reasonably applied, rather than specific styles. Staff added that this document should be considered a point of departure where individual communities can provide additional guidelines.

Commissioner Dickenson pointed out that there is a lot of redundancy that should be removed to shorten the document. The Commission and staff agreed.

Commissioner Dickenson recommended rewording the added sentence on page 27 regarding "stepbacks" and reordering the drawings on pages 30-35. Staff agreed.

Commissioner Dickenson indicated a maximum height limit of four feet for retaining walls may be too restrictive. Mr. Hillmer suggested broadening the considerations where appropriate.

Commissioner Greenberg indicated that the diagram on page 44 shows too much reliance on landscape screening.

Commissioner Holland suggested indicating recommended tree species to be used in parking groves on page 48.

Commissioner Dickenson noted that on page 52, the 6<sup>th</sup> bullet should be modified to refer to buildings located in natural settings.

Commissioners Berland, Greenberg, and Dickenson discussed whether the term "*excessively high retaining walls*" should be quantified.

Commissioner Greenberg suggested reducing the size of the chimneys in the photograph on page 79, if possible, and finding an alternative photograph on page 96.

In response to Commissioner Dickenson, staff confirmed that the photograph on page 105 was deleted.

Commissioners Greenberg and Barner commented on site lighting standards.

Commissioner Dickenson recommended moving Section C.5-General Development Standards to an appendix. Commissioner Greenberg believed this document should include an introduction that explains neighborhood character and what the document's overall goals are. Commissioners Barner and Dickenson supported this idea as a way to create some context.

Commissioner Berland desired to discuss procedures for design review, since he would not be present on April 25, 2005. The Commission and staff agreed.

### **Design Review Procedures**

Commissioner Berland believed it is important that certain issues be brought to the Commission, and is concerned with some of the administrative determinations that have been made. He believes the Director or other senior staff member should be responsible to make affirmative determination that a public hearing before the Planning Commission will not be required, i.e., all residential design review project should require public hearings before the Planning Commission unless waived by the Director or senior staff member in writing, after making findings that the proposed development:

- a. Did not raise significant policy issues;
- b. Is in compliance with the Countywide Plan, Community Plan, and Development Code and meets the mandatory design review findings and the standards set forth in the Single Family Residential Design Standards;
- c. Would not be detrimental to adjacent properties, the surrounding neighborhood, or the public interest, such as setting an unfavorable precedent; and
- d. Did not exceed the median square-footage of existing residential structures within a 600-foot radius by more than 20%.

Commissioner Berland felt that a “*public controversy*” criterion cannot be relied on to protect the public interest since neighbors may have a number of reasons for not opposing a project, such as receiving consideration from the applicant. In any event, he did not think the burden should necessarily be on the neighbors to protest a project, which may be adverse to their interest or may be adverse to the public interest.

Agency Director Hinds agreed with the concept of tightening administrative practices and more clearly defining the pathway that different projects follow. However, it is not a good option to bring more projects forward to the Commission due to time and resource constraints. Instead, projects that meet the design guidelines and the Countywide Plan should go through a less rigorous process.

Commissioner Holland agreed with staff that design review should be handled administratively in most cases. He further pointed out that the Board must approve any changes to design review procedures, and feels there is interest at the Board to have more items handled at a lower level, if the project satisfies conditions and findings.

Agency Director Hinds noted that a clearer, more predictable process is desired.

Commissioner Berland indicated that his concern is not the little projects, but the large “monster homes” which should be considered by the Commission.

Commissioner Julin supported Commissioner Berland’s suggestion.

Commissioner Dickenson did not agree with Commissioner Berland’s proposal. He stated that administrative decisions have been made with which he did not agree, but he hoped that staff can learn from prior mistakes.

Commissioner Barner felt the Commission should be advised on projects that may have some ramifications and permit the Commission to indicate whether or not they should hear the matter.

Commissioner Holland recommended the development of “safe harbor guidelines” to provide incentives for those who choose to scale down and not go through an expensive, time-consuming process.

Agency Director Hinds stated that staff is working to develop ways to reduce steps for non-controversial projects. Commissioner Greenberg suggested that staff provide the Commission with a working list of projects with a basic information summary. Agency Director Hinds responded in the affirmative.

Commissioners Berland indicated that he wants to be able to make recommendations and/or suggestions to staff in regard to projects.

Chairman Thompson recommended that staff allow the Commission to review their general list of projects in the pipeline. Agency Director Hinds noted that while having a transparent process is desirable, Board members have expressed concerns that the system is getting bogged down. He further noted that staff would continue to provide a summary report to the Commission regarding items for future consideration.

Commissioner Berland expressed his concern regarding oversized homes, and Agency Director Hinds noted that some communities are intentionally diverse and in those situations the average house size would not always be an effective trigger for design review.

Commissioner Julin agreed that further Commission involvement is needed on design review, and that the Commission's role in design review should be revisited at a future meeting date.

Chairman Thompson asked for a motion.

**M/s, Dickenson/Greenberg, that the Planning Commission continue the public hearing on the Draft Single-Family Residential Design Guidelines to the Planning Commission meeting of April 25, 2005. Motion passed 7/0.**

*Chairman Thompson announced at 4:15 p.m. that the Commission would take a short recess and then reconvene with the next agenda item.*

7. AGRICULTURAL CONSERVATION AND PRODUCTION EASEMENT AND DECLARATION OF RESTRICTIONS – MORITZ JP

Public hearing to review and consider the recommendation to the Board of Supervisors of the Moritz Agricultural Conservation and Production Easement and Declaration of Restrictions associated with the Moritz Master Plan Waiver, Coastal Permit, Design Review, and Use Permit applications conditionally approved by the Planning Commission at the February 28, 2005, continued public hearing. The conditional approvals included: (1) construction of 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, and various site improvements; (2) legalization and conversion of an existing 1,500 square foot single-family residence to a farm worker housing unit; (3) conversion of the existing 1,410 square foot primary single-family residence to a guest house by removal of the kitchen; (4) demolition of two small accessory structures; and (5) continuation of the cattle-grazing operation on the 84.33-acre subject property. The owners propose to convey to the County an Agricultural Conservation and Production Easement and Declaration of Restrictions to provide permanent preservation of the potential agricultural lands and the oak woodlands and to restrict and maintain the farmworker housing unit for use by farm workers who are actively engaged in the production of agriculture. The property is located at 5675 Horseshoe Hill Road, Bolinas, and is further identified as Assessor's Parcel 188-090-13.

Agency Director Alex Hinds stated that it is staff's position that providing a recommendation on the Easement was appropriate when the Commission previously considered the entire permit. Now that the matter has been acted upon and appealed to the Board of Supervisors, it is not appropriate to continue to review and recommend changes to the Easement to the Board at this time.

Commissioner Dickenson noted that one Planning Commission condition was that the Easement had to be reviewed by the Commission before final approval by the Board. David Zaltsman, Deputy County Counsel, responded that if the Board adopted that condition, the matter would come back to the Commission.

Agency Director Hinds stated that the appeal included a concern that both the Easement and the planning permit approval be acted upon at the same time. It is staff's belief that the Board may wish to take action on both items at the Board hearing.

Deputy County Counsel Zaltsman stated that it is his understanding that the two local groups have filed an appeal to the Board of the Commission's decision to conditionally approve these. While it would have been appropriate for this Commission to have included recommendations regarding the Easement as part of the Commission's actions on the permits, at this time the Easement, along with the permits, are no longer in the Commission's jurisdiction. It is the normal legal rule, and the longstanding practice in this County, that when an appeal of a decision of a lower body is filed, jurisdiction vests in the appellate body and the lower body is fully divested of jurisdiction. Therefore, this Commission no longer has jurisdiction to make recommendations to the Board on the matter of the Easement as part of the Board's consideration of the appeal, since it is an integral part of the permits that have been appealed to the Board. While this Commission may hold a noticed public discussion on the matter of the Easement, any minutes, conclusions, or recommendations will not be included in the record on appeal or taken into consideration by the Board when acting on this appeal, unless the Board refers the matter back to this Commission prior to acting on the permits.

Commissioner Berland asked staff if the Commission is precluded from having a discussion on the Easement. Deputy County Counsel Zaltsman responded that the Commission is not precluded, but the discussion would not be part of the record for the Board to rely upon.

Johanna Patri, Senior Planner, noted that the petition for appeal includes the Easement, which is a component of the project, and approval of the planning permits should not be given until the Easement and all its subsidiary documents are finalized. Staff noted that legal counsel agrees that part of the appeal is the substance of the Easement that has been forwarded to the Board.

Commissioner Julin stated that the appellant is correct in stating that one is integral to the other. She disagreed with the idea of fine-tuning the Easement wording after project approval. She believed the Easement must be fined-tuned before project approval, because it effectively removes the public from participating in the prototype of what would be used in the future. She hoped the Board would not approve the project until the Easement is fined-tuned and hoped the Board

would refer this matter back to the Commission. Also, the Commission must be part of the Easement review process because it is a prototype.

Commissioner Berland agreed this is a very important template for what would happen in West Marin in the future, and he hoped staff would strongly recommend that, if the Board approves the project, they defer consideration of the Easement so that the Commission can discuss the matter or attend the Board meeting and indicate opposition.

Commissioner Dickenson hoped the Board would send the matter back to the Commission when it is known whether the project is going to be approved, and if so, the conditions are known. He is not at all convinced that this Easement would be the model for all future easements in Marin County, although he agreed the Easement is important. He reiterated that his motion on this matter at the February 28, 2005, Planning Commission meeting stated that the Planning Commission must review the Easement prior to Board approval.

Commissioner Greenberg stated that she voted against the project because it did not have the Easement in a form that she felt was approvable, and she hopes that the Board will support the appeal. She concurred with Commissioner Julin that it is only logical to have the entire picture before framing. Also, in her view, while public testimony should be allowed today, there would be no point in discussing the Easement language, because it is unknown what action the Board will take.

Commissioner Holland pointed out that the Commission has no jurisdiction on this matter, and the Commission must assume that the project will either get turned down by the Board or, if adopted by the Board, the project would come back to the Commission for additional review for the Easement.

Senior Planner Patri noted that there are several written requirements and testimony on the record that will be included as attachments to the Board's letter. Commissioner Dickenson noted that the Commission never talked about Commissioner Greenberg's comments and it should not be represented as a consensus of the Commission.

The hearing was opened to the public.

Douglas Ferguson, representing applicant Moritz, stated that after reviewing the letter from the Deputy County Counsel he had nothing further to add. He then pointed out that the Easement has been under consideration by staff for over three years and agreed that it is a tough Easement.

The public hearing was closed.

**M/s, Dickenson/Holland, that the Planning Commission not discuss specifics of the Easement at this meeting and stand by the condition that the Easement be approved by the Commission prior to approval by the Board of Supervisors. Motion passed 6:1 (Commissioner Berland opposed).**

*Chairman Thompson adjourned the Planning Commission meeting at 4:58 p.m.*