

**MARIN COUNTY PLANNING COMMISSION HEARING MINUTES**

**July 28, 2005**

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

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

*Commissioners Absent:* None

*Staff Present:* Alex Hinds, Agency Director  
Brian Crawford, Deputy Director of Planning Services  
Eric Steger, Public Works, Senior Engineer  
David Zaltsman, Deputy County Counsel  
Christine Gimmler, Senior Planner  
Jessica Woods, Recording Secretary

*Minutes Approved on:* August 22, 2005

Convened at 1:07 p.m.  
Adjourned at 3:34 p.m.

1. INITIAL TRANSACTIONS

- a. Incorporate Staff Reports into Minutes

*M/s Julin/Holland to incorporate the staff reports into the minutes. Motion passed 7/0.*

- b. Continuances – None

- c. Approval of Minutes – July 11, 2005

*M/s Holland/Julin to approve the minutes of July 11, 2005, as amended. Motion passed 7/0.*

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

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

4. DIRECTOR'S REPORT

Alex Hinds, Agency Director, announced that Kim Shine, Planning Commission Secretary, will be taking over the duties of transcribing the minutes starting August 22, 2005.

Agency Director Hinds reported that the revised draft Countywide Plan and revised Notice of Preparation for the EIR scoping meetings are tentatively scheduled for mid to late August.

Brian Crawford, Deputy Director, announced that the Board of Supervisors adopted the Single-Family Residential Design Guidelines Manual last week. Also, the Board requested a few additional revisions to the text in the areas of pointing out the importance of green building and universal design principles. The Board included some references to pedestrian and bicycle design, so that was inserted in the portion of the text that addressed roadway designs for residential subdivisions. That document is now effective and will be officially used by staff, the Planning Commission, and the Board of Supervisors in evaluating single-family residential design projects. Also, the submittal checklist was amended to include a check box that acknowledges that the applicant filing the material has read the guidelines and reviewed the user guide and used the checklist contained in that users guide. Staff further announced that the Design Guidelines will be posted on the website and will be available as a CD version.

**Board Meetings**

**August 9, 2005**

- First Reading of Noise Ordinance

**August 16, 2005**

- Second Reading of Noise Ordinance
- Consider Marin Horizon School Appeal, Use Permit, Design Review application

**August 30-2005**

- Coastal Commission Appeal of Moritz Approvals

5. FUTURE AGENDA DISCUSSION ITEMS, FIELD TRIPS

**August 8, 2005 – Starting at 11:00 a.m.**

- Coastal Permit and Design Review Appeal: Telford
- Cascade Canyon White's Hill Open Space Management Plan Final EIR
- Appeal of Pappas Design Review Clearance

**August 22, 2005**

- Las Cumbres Master Plan, Tentative Map, Negative Declaration

**September 12, 2005**

- Lawson's Landing DEIR

Commissioner Barner asked staff to organize a site visit of Lawson's Landing in order for the Commission to have a better understanding of the project. Deputy Director Crawford responded in the affirmative. Also, staff agreed to organize a site visit of the landfill as well for those Commissioners who have not visited the site.

6. MASTER PLAN, PRECISE DEVELOPMENT PLAN, AND SUBDIVISION APPLICATION  
APPEAL: EASTON POINT (MARTHA COMPANY) CG

Public hearing to consider the appeal filed by the Martha Company of the Director's Determination that the Easton Point (Martha Company) Master Plan 05-4, Precise Development Plan 05.10, Subdivision 05-3 applications cannot be filed for processing until a determination has been made by the Marin Local Agency Formation Commission (LAFCO) as to whether the County of Marin is the appropriate jurisdiction to process the submitted applications. The Easton Point project proposes the subdivision and development of a 110-acre property located near the southeastern tip of the Tiburon peninsula. The subject property is proposed to be subdivided into a total of 36 lots including 31 single-family residential lots, 3 multi-family (triplex) lots, 1 public open space lot, and 1 MMWD water tank lot. The residential lots range from 0.62 acres to 6.67 acres in size. Proposed residential development includes 31 market-rate single-family homes and 9 affordable units within three triplex structures. Specific home designs have not been submitted as part of the application and, therefore, would be subject to future Design Review. However, the applicant has proposed Architectural and Landscape Design Guidelines (including maximum home sizes of 5,000 to 8,750 square feet) that would apply to development on the property. Access to the proposed lots would be provided by three new roadways/driveways off Paradise Drive (serving 14 lots) as well as extensions of existing roadways including Mountain View Drive (serving 3 lots), Ridge Road (serving 19 lots), and Straits View Drive (serving 1 lot). The subject property is located at **Paradise Drive, Tiburon**, and is further identified as **Assessor's Parcel 059-251-05**.

Christine Gimmler, Senior Planner, summarized the staff report and recommended that the Commission review the administrative record, conduct a public hearing, and request applicant's concurrence to continue the public hearing to August 22, 2005, in light of LAFCO's correspondence dated July 27, 2005.

Agency Director Hinds stated that staff has tried to direct the applicant and resources to the appropriate process in order to increase the likelihood of a successful outcome. He expressed concern for the characterization that the County is refusing to process an application because an applicant is entitled for an agency to process their application. Staff's intent was to focus all resources and efforts to the proper agency to process the application.

Commissioner Dickenson disclosed that almost 30 years ago when he worked in the Planning Department he was involved with Doug Maloney and Marge Macris in regard to reviewing a range of alternatives and drafting the stipulated judgment. He explained that he was a technical person helping the planner and attorney who drafted the stipulated judgment.

Commissioner Dickenson asked Deputy County Counsel if the County had a position in regard to the status of that stipulated judgment. David Zaltsman, Deputy County Counsel, responded that on August 9, 2005, the Board would have a closed session to discuss this matter and one option is to go directly back to the court to seek a determination on that stipulated judgment.

Commissioner Dickenson asked staff if the County received a formal letter from the Town Council of Tiburon expressing their desire to exercise their right of first review or to waive those rights. Deputy Director Crawford responded that there is a letter attached in the staff report indicating their strong interest in annexation.

Deputy County Counsel Zaltsman explained that if the Board decided to initiate litigation at its August 9, 2005, meeting, then the August 22, 2005, meeting of the Planning Commission might be moot.

Commissioner Greenberg noted for the record that she received a letter requesting her to recuse herself on this item since she served on the Tiburon Planning Commission in 1992 when the first application was received. She stated for the record that County Counsel advised that without any specifics as to where a conflict would be, that it would not be necessary for her to recuse herself. Commissioner Ginalski noted

for the record that he received a copy of the same letter requesting that he recuse himself and agreed with Commissioner Greenberg that County Counsel rendered an opinion that there was not sufficient reason set forth in the letter for him to recuse himself in this matter.

The hearing was opened to the public.

Mary McEachron, representing appellant Martha Company, explained that 15 years ago the County faced a similar dilemma, an extraordinarily controversial project which planning staff did not want to process and deferred to a different jurisdiction. In that case, planning staff decided to honor its obligation to process an application within its jurisdiction, and the Buck Institute application was processed in the County of Marin, even though the County did not know what would occur at LAFCO. They are asking the Commission to direct the Community Development Agency to do the same to honor its obligation to process an application within its jurisdiction. The California Permit Streamlining Act did not permit the County to simply refuse to process an application. Within 30 days they are entitled to a completeness letter or an incompleteness letter and a refusal to process letter is neither. However, in 1976, the County agreed to, stipulated to and was directed by the Federal District Court to approve an application for a minimum of 43 homes. She noted that the District Federal Court indicated the following: *“that 43 residential units is the minimum number of units to be allowed on the Martha Company property. The Board, Planning Commission and Planning Department shall in good faith consider a proposed rezoning and development plan for development of a greater number of 43 units if submitted by Martha Company.”* She stated that LAFCO has never accepted an application at this juncture. This judgment remains valid and binding, and the possibility that another jurisdiction would find fault with that process or that approval is not grounds to relieve the County its obligation to process the application under the Federal Court judgment. She added that the stipulation indicated that the County is required to process this application and the entry of judgment stated the same. She then emphasized one point as to what is the County going to ask LAFCO to do? She then read the County’s refusal to process letter as follows: *“It would be inappropriate for the County to accept the proposed application for process until LAFCO determined if and how dual annexation policy requirements may apply to this project.”* She pointed out that dual annexation policy applies only to urban development. She stated that 40 units on 110 acres is not urban development. She then asked how LAFCO is going to reach the conclusion of whether this is urban development which must be annexed to the Town of Tiburon. Would the County represent that it will, in fact, approve the application of 40 homes? Also, if the Town of Tiburon wanted to annex the property, would they represent that they will approve urban level development. She believed the answer is clearly no, because nobody can make those representations until CEQA has been complied with. The County’s refusal to process this application is a violation of court order, violation of the written agreement with the Martha Company, and it is a violation of the applicant’s vested rights under both federal and California law. The County was directed to process this application by the Federal District Court. The County has the jurisdiction, the power, and the obligation to process this application, so she asked that the Commission direct the Community Development Agency to do so. She further noted that in regard to the letter from LAFCO, she would agree to a continuance to the August 22, 2005, Planning Commission meeting.

Commissioner Holland asked Ms. McEachron to discuss the applicant’s decision to initially file the application with the Town of Tiburon. Ms. McEachron responded that they filed an application in the Town of Tiburon in 1992 and completed a \$400,000 EIR. At the end, the Town decided that a brand new EIR was required, so they went through that process and by the end of the process over a million dollars in environmental studies had been completed, and two draft EIR’s were circulated and the Town of Tiburon desired additional information. She believed under those circumstances, it is very clear that the Town of Tiburon was not a jurisdiction in which this would be permitted, and the County is a different situation.

Deputy County Counsel Zaltsman clarified that petitioning by owners is one way to initiate annexation, but the law also allows a resolution of application by any entity that either contains the territory or would contain the territory. Therefore, either the County or Town of Tiburon could apply for annexation. The problem is, depending on LAFCO's action, there are still various protest provisions depending on whether the territory is inhabited or uninhabited. The County could not require the Martha Company by itself to annex into the Town of Tiburon. Also, for the purposes of defining urban development for LAFCO purposes and for implementing its dual annexation and sphere of influence policies, urban development is that development that requires urban services and one primary urban service is sewer.

Commissioner Dickenson discussed the stipulated judgment and asked Ms. McEachron if there is any material included in the stipulated judgment that would require the County to approve an application even if it may be contrary to the current General Plan. Ms. McEachron responded in the affirmative. She then read the following language into the record: *"The Planning Department and Board of Supervisors have determined that development of the parcel, not less than a minimum of 43 single-family residential units located on 1.5-acre lots, is consistent with the goals of the General Plan."*

Commissioner Dickenson questioned whether Ms. McEachron's position is that current General Plan policies would not be applicable to any review required under the agreement. Ms. McEachron believed it is valid for the Commission to review the Current General Plan. She believes the application is 100% consistent with the General Plan. She then read the following language from the judgment into the record: *"A Master Plan Development shall be submitted prior to development and shall to the extent such as economically feasible, comply with the applicable residential design standards in accordance with paragraph 3 above."* She further noted that paragraph 3 indicated that the applicant did not have to comply with the Ridge and Upland Greenbelt because it is not economically feasible, so both of those must be applied simultaneously.

Commissioner Dickenson asked Ms. McEachron the amount of discretion the County would have in terms of reviewing that application. Ms. McEachron responded that there are numerous design and subdivision guidelines, which the County would ordinarily apply to review a subdivision that are appropriate to apply in this case. The County must make sure, for example, that the neighbors are not unduly affected subject to the judgment, so it is an important and significant task this Commission will undertake in balancing what it is required to do in approving 43 homes, including homes in the Ridge and Upland Greenbelt, and reviewing the design of the project.

Peter Banning, representing LAFCO, explained that LAFCO is not able to initiate any of these annexation proceedings. At some point, someone must bring LAFCO an application and it must be in the right sequence in order to make sense out of the entire matter. LAFCO's policies are well established and well understood. LAFCO agreed with staff that the Town of Tiburon is ordinarily the appropriate agency to review development applications within its sphere of influence, but there are limits to their abilities to require that to occur.

Commissioner Dickenson asked Mr. Banning if the Town of Tiburon were to initiate an application for annexation, would the Town need to pre-zone it in advance of an application to LAFCO. Mr. Banning responded in the affirmative. Also, the action to pre-zone would make the Town of Tiburon the lead agency under CEQA, so they must process their own EIR.

Commissioner Dickenson asked staff for the land use designation for the Town of Tiburon. Agency Director Hinds deferred that question to the Town of Tiburon staff.

Scott Anderson, Director of Community Development, Town of Tiburon, indicated that Tiburon considers the property to be located in the City Centered Corridor, the Town's sphere of influence and located in the urban services area of Tiburon as defined by the County of Marin. The project impacts would affect residents in Tiburon more than anyone else. They believe it is a textbook case of why there

are policies such as the dual annexation policy; why there are spheres of influence policies and urban services policies in the County of Marin; and why Tiburon supports these policies and why they should be enforced in this instance. They believe having the Town of Tiburon process these development applications is the right and fair way to proceed. He respectfully disagreed with the applicant's characterization of the Town of Tiburon with respect to processing prior applications from the appellant. This site is extremely sensitive and very constrained, and the projects proposed to date did not deal effectively with those issues. He explained that the DEIR found there were 10 significant unavoidable impacts in association with that project. He pointed out that the applicants were unhappy with the results of the DEIR, and in both instances they pulled out before those documents could be finalized and before the response to comments were prepared, so he felt it is unfair to paint the Town of Tiburon as "the bad guy." He also disagreed very strongly with Ms. McEachron's statement that somehow the stipulated judgment would be binding on the Town of Tiburon, because there is no legal basis for that conclusion. He further indicated that the Town's General Plan would allow a maximum of 44 units on the 110 acres.

Commissioner Ginalski asked Director Anderson why this property was not rezoned or annexed. Director Anderson responded that over the years the Town's approach has been that when development is proposed on properties within the Town's sphere of influence, the County has generally directed those applications to the Town, and they file applications for pre-zoning at the same time they file applications for the development or master plan. In both instances, the earlier application in 1992 and later application were both pre-zoning applications and the EIR considered that in its analysis, so it would have been addressed at the same time. However, since neither of those EIR's proceeded to completion there is no document on which to base a pre-zoning analysis.

Commissioner Holland asked Director Anderson if, in his view, the stipulated judgment is no longer effective. Director Anderson responded that there is a high probability that the stipulated judgment would not be found valid.

Commissioner Dickenson discussed Director Anderson's letter dated May 9<sup>th</sup> and asked Director Anderson if there is any material from the Town of Tiburon specifically stating that the Town wishes to exercise or, alternatively, waive the right of first review on this property. Director Anderson responded that there is nothing in writing at this time, but if a Resolution is desired by the Commission from the Town Council, that could be added to Council's next agenda.

Alice Fredericks, former Mayor, Town of Tiburon, noted that she served on the Planning Commission during the applicant's 2001 submission. She indicated that after the public hearings, the Town and community expected to view the story poles promised by the project applicant and then deal with the issues of mitigation. They were disappointed when the applicant simply faded away. She then provided the Commission with an illustration of Paradise Drive Properties for their consideration. She explained that several properties are highly likely to annex if the circumstance presents itself to them. The proposed development is on a piece of land at the end of a peninsula. Therefore, it would not make sense for the site to be left in the County's jurisdiction. She noted that the Town of Tiburon will bear the burden of both the construction and the traffic generated by the project, and therefore should have input into the last major piece of development in the Town of Tiburon. She agreed that the County is not the appropriate agency to process this application, and if a resolution were desired from the Town of Tiburon they would provide such resolution to the County. She further preferred that the Commission direct the applicant to the Town of Tiburon for the Town to exercise the right of first review.

The following concerned residents believe the Town of Tiburon deserves the right to make decisions on the Martha Company project, not the County, because of the impacts on the citizens of Tiburon and their road system, particularly Paradise Drive. They urged the Commission to direct the applicant to the Town of Tiburon:

- George Landau, Tiburon resident

- John Kunzweiler Tiburon resident
- Steve Stein, Larkspur resident
- Joanna Kemper, Tiburon resident, adjacent property owner
- Maureen Meikle, Tiburon resident
- Jerry Riessen, Tiburon resident, provided illustration to the Commission
- Bill Coomber, Tiburon resident
- Karen Nygren, Tiburon resident, 1986-92 served on Planning Commission/1992-96 served on Town Council/Mayor in 1994

The public hearing was closed.

Deputy County Counsel Zaltsman explained that urban service area policies in the Countywide Plan were formed in support of LAFCO's sphere of influence policies. The case law is clear that the area of annexation law has been preempted by the State and only LAFCO can implement that law. Staff preferred to be on firm legal ground with respect to sending the application to the Town of Tiburon and staff is not comfortable recommending that the Commission rely strictly on the County's urban service policies to force an applicant to go to another jurisdiction for processing.

Agency Director Hinds believed it would be prudent to review all cases and factors before the Commission and staff make any recommendations. Deputy County Counsel Zaltsman added that staff would recommend to the Board on August 9<sup>th</sup> that this issue be resolved in regard to the stipulated judgment. Also, Deputy County Counsel Zaltsman recommended meeting with Mr. Banning in order to clarify whether or not his Commission will provide a policy determination.

Commissioner Greenberg agreed that it is good to confer with Mr. Banning, but he did not set policy and ultimately it is his Commission that makes the decision, so having a statement by the Commission could only be helpful. She further would not object for this continuance to further consult, but if the majority of the Commission desired to act on this application she would not have objection to that recommendation.

Chairman Thompson recommended that the Commission continue this matter as requested by staff.

Chairman Thompson asked for a motion.

***M/s Greenberg/Holland to continue the matter to the August 22, 2005, Planning Commission meeting with the concurrence of the applicant. Motion passed 7/0.***

Commissioner Barner expressed concern for the 10 unavoidable impacts and asked staff to provide a summary of those impacts for his review. Agency Director Hinds agreed to provide that information to Commissioner Barner.

*Chairman Thompson adjourned the Planning Commission meeting at 3:34 p.m.*