

**MARIN COUNTY PLANNING COMMISSION HEARING MINUTES**

**August 22, 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  
Thomas Lai, Principal Planner  
Christine Gimmler, Senior Planner  
Fred Vogler, GIS Manager  
Robert Taylor, GIS System Analyst  
Kim Shine, Recording Secretary

*Minutes Approved on:* September 12, 2005

Convened at 1:04 p.m.  
Adjourned at 3:43 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 – Request for continuation of Martha Company Appeal will be addressed as Item #7 of the agenda.  
c. Approval of Minutes

*M/s Holland/Julin to approve the minutes of July 28, 2005, as amended. Motion passes 7/0.*

*M/s Holland/Barner to approve the minutes of August 8, 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

Director Alex Hinds reported that the Revised Public Review Draft of the Countywide Plan was released on August 19, 2005, and provided each Commissioner with a copy for review.

Staff gave an overview presentation of the County Enterprise Geographic Information System (GIS).

Due to time constraints, agenda items 4b, 4c, and 5 were deferred to the end of the meeting.

6. RATIFICATION OF RESOLUTION UPHOLDING THE SELTZER APPEAL AND DENYING THE PAPPAS DESIGN REVIEW CLEARANCE

TKL

Ratification of resolution upholding the Seltzer appeal of the Community Development Agency's Design Review Clearance determination approving the Peter Pappas proposal to install a 10-foot, 9-inch high patio cover in the rear yard of a property which is being developed with a residence, garage, pool house, and swimming pool. The proposed patio cover would span a distance of approximately 65 feet between the pool house and garage and would maintain a minimum setback of 24 feet from the nearest portion of the rear property line that is located to the east. In addition, the applicant proposes to install a wooden screen around two air conditioning units that are located on the roof of the adjoining garage. The following bases for appeal were cited: (1) the patio cover results in an oversized secondary structure that exceeds the originally-approved plan, is contrary to previous County decisions, and would be visible from surrounding properties; (2) no public or community review was provided; (3) construction commenced on the patio cover prior to issuance of a building permit; (4) other structures are not in compliance with the original approvals; and (5) the development has resulted in construction impacts relating to roadway damage, inadequate erosion control, grading impacts, and violation of construction hours. The subject property is located at 465 Fawn Drive, San Anselmo and is further identified as Assessor's Parcel 177-071-07.

*(This item was continued from the August 8, 2005, meeting.)*

Staff summarized the revised resolution sustaining the Seltzer appeal and denying the Pappas Design Review Clearance approval and recommended that the Commission review the administrative record, conduct a public hearing, and move to adopt the revised resolution upholding the Seltzer appeal.

Chairman Thompson noted that this item was continued from the August 8, 2005, meeting at the applicant's request in order for the applicant's attorney to make a presentation to the Commission.

The hearing was declared open to the public.

The following people spoke in opposition to the Seltzer appeal and/or in favor of a continuance of this item to a future date, citing the following concerns:

Neil J. Moran, attorney representing Peter and Sophie Pappas  
Donald L. Blayney, Donald L. Blayney & Associates  
Mike Hammerstram, CSW Engineers  
Peter and Sophie Pappas, 465 Fawn Drive (applicant)

The applicant desires additional time for design professionals to respond to landscaping/architectural concerns expressed by the neighbors, and the applicant alleges denial of his due process because of problems accessing his file.

In response to the Commission regarding the scope of the design review clearance, Deputy Director Crawford stated that if the Commission wished to consider alternatives to the project, staff's position is that the proper venue for that would be through a minor design review application, a process the applicant would have to initiate by filing an application. The Commission could request that it retain jurisdiction and have an alternative be reviewed through a minor design review application that comes with the benefits of broader public notice and the ability to impose conditions of approval, both of which are not characteristic of a design review clearance. The Commission can reach to the merits of this project through a design review clearance because the findings for design review approval relate to the merits of a proposal. The Commission may also deny a design review clearance strictly on procedural grounds if it

desired to have the project go through a broader review process before the merits of the proposal are considered and a decision is made.

In response to the applicant's statement regarding his difficulty in obtaining plans from the County's records, staff assured the Commission that both planning and building inspection files are available to the public. In addition, all drawings for this project were submitted by Mr. Pappas or his design professionals and should be available from the design professionals who prepared them under contract to Mr. Pappas. In addition, a stamped copy of the approved plans is required to be maintained at the project site.

The following people spoke in support of the Seltzer appeal and/or in opposition to a continuance, citing concerns of the project's possible visual impacts, noise, and the loss of open space; the need for appropriate landscaping; and restoring the site to the condition originally approved by the Commission by removing the concrete and steel patio cover and the air conditioning units.

Bruce Seltzer, 485 Fawn Drive, San Anselmo (appellant)  
Kimberly Iaconetti, 400 Fawn Drive, San Anselmo  
Dr. Shannon Mong, 15 Fox Lane, San Anselmo  
Rev. Edgar Welty, 350 Fawn Drive, San Anselmo  
Chuck Swensen, 607 Fawn Drive, San Anselmo

The public hearing was declared closed.

Commissioner Holland stated that the design review clearance should not have been approved initially, and therefore he would vote to uphold the Seltzer appeal and deny the application on procedural grounds. The applicant could then appeal the decision to the Board of Supervisors or apply for a complete minor design review.

Commissioner Dickenson stated that in his opinion, the Commission should take action today on the merits of the project rather than whether a design review clearance should have been approved.

Commissioner Greenberg agreed with Commissioner Dickenson and further stated that when faced with a situation like this, it is the Commission's responsibility to give the applicant enough information so that the applicant can proceed with clear direction.

In response to a question from the Commission regarding whether the Commission can act today if the appellant does not agree to a continuance, Director Hinds said that the matter was continued at the applicant's request on August 8, 2005, and if the Commission is ready to act today, they may do so.

Chairman Thompson asked for a motion on the continuance of this project.

***M/s Holland/Julin to deny the applicant's request for a continuance.***

Commissioner Greenberg stated that she intended to vote in favor of the motion to deny the applicant's request for a continuance because the grounds on which a continuance was requested, namely that the applicant doesn't have access to the technical drawings in his file, flies in the face of common sense, since the applicant is required to have such stamped drawings at the site and the preparers of such drawings are hired by the applicant and presumably can produce them in a timely fashion.

Commissioner Barner reiterated that whatever action the Commission takes today, the applicant has the option of appealing the Commission's decision to the Board of Supervisors, and stated that he intended to vote in favor of the motion to deny the applicant's request for a continuance.

Commissioner Dickenson commented that the Commission has spent many hours over a period of several years talking about this application. He noted that the matter was continued from the August 8, 2005, meeting at the applicant's request and that furthermore no new information had been introduced at today's meeting. Given the fact that he would not be present at the September 12, 2005, meeting, he preferred to act on the matter today.

**Motion passed 7/0.**

Chairman Thompson asked for a motion to approve the draft revised resolution upholding the Seltzer appeal.

***M/s Dickenson/Holland to adopt the Resolution submitted by staff, as amended, upholding the Bruce Seltzer appeal and denying the Peter and Sophie Pappas Design Review Clearance application.***

The Commission reviewed and discussed the language of the proposed revised resolution, and directed staff to make the following changes:

- Page 1, Finding I, change the first sentence to read: "*WHEREAS Peter and Sophie Pappas submitted....*"
- Page 1, Finding I, change the sixth sentence to read: "*Also included in the application is the proposed installation....*"
- Page 1, Finding III, change the date in the first sentence to "*July 15, 2005*".
- Page 1, Finding IV, add at the beginning of the second sentence, "*At the request of the applicant's legal counsel, the Planning Commission...*" and add to the end of the last sentence, "*...and to hearing public testimony, including that from the applicant's legal counsel.*"
- Page 2, Finding VI-C, change the first sentence to read: "*The concrete and steel design of the proposed patio cover is incompatible with the type of construction, scale, and design of other residential buildings in the surrounding neighborhood.*"
- Page 3, Section II: Action, revise the second paragraph to read: "*NOW THEREFORE BE IT FURTHER RESOLVED that the Marin County Planning Commission recommends that no final inspection be granted for any portion of the development on the property until the property owner brings all of the site improvements into conformance with the current County-approved plans for the property by removing the patio cover and restoring the area occupied by the cover to a landscaped terrace as shown in the original approved plans for the property, regrading the area above the patio cover and restoring the pre-existing natural condition as shown on the original approved plans for the property extended to the easterly rear property line, relocating the rooftop-mounted air conditioning units to a lower location next to the residence or garage; OR obtaining approval from the County for, and implementing, a revised plan. The Planning Commission recommends that the work be completed prior to October 15, 2005.*"
- Page 3, Section II: Action, add to the end of the last paragraph: "*...and shall be heard by the Planning Commission.*"

**Motion passed 7/0. The deadline for filing an appeal is September 1, 2005, by 4 p.m.**

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. PC05-012

A RESOLUTION UPHOLDING THE SELTZER APPEAL AND DENYING THE PAPPAS DESIGN REVIEW CLEARANCE (DC 06-3) 465 FAWN DRIVE, SAN ANSELMO ASSESSOR'S PARCEL 177-071-07

\*\*\*\*\*

SECTION I: FINDINGS

- I. WHEREAS Peter and Sophie Pappas submitted an application seeking approval to install a 10-foot, 9-inch high patio cover in the rear yard of the property, spanning a distance of approximately 65 feet between the pool house and garage. The 18-foot deep structure would cover an approximately 1,166 square foot area and maintain the following setbacks from the nearest property lines: (1) 24 feet from the nearest portion of the rear property line that is located to the east; (2) 40 feet from the northerly side property line; and (3) 109 feet from the southerly side property line. The patio cover would consist of a steel-framed structure with a concrete roof. The applicant has indicated that neither the roof of the patio cover nor the adjoining garage or pool house are proposed to be used as a sport court. A row of planter boxes would be placed on the downslope edge of the patio cover, and 5-gallon sized Monterey cypress trees would be planted along the easterly rear property line for visual screening purposes. Also included in the application is the proposed installation of a wooden screen around two air conditioning units that are located on the roof of the adjoining garage. The subject property is located at 465 Fawn Drive, San Anselmo and is further identified as Assessor's Parcel 177-071-07.
II. WHEREAS on July 8, 2005, the Community Development Agency issued a determination that the proposed work qualifies for a Design Review Clearance pursuant to the requirements of Marin County Code Section 22.42.020.B.7.
III. WHEREAS a timely appeal was filed by Bruce Seltzer, owner of adjoining property located at 485 Fawn Drive, on July 15, 2005. The following bases for appeal were cited: (1) the patio cover results in an oversized secondary structure that exceeds the originally-approved plan, is contrary to previous County decisions, and would be visible from surrounding properties; (2) no public or community review was provided prior to the issuance of the approval; (3) construction commenced on the patio cover prior to issuance of a building permit; (4) other structures on the property, including the garage and pool house, have not been constructed in compliance with the original approvals; and (5) the development has resulted in construction impacts relating to roadway damage, inadequate erosion control, grading impacts, and violation of construction hours.
IV. WHEREAS the Marin County Planning Commission held a duly noticed public hearing on August 8, 2005 to consider the merits of the project and appeal, and hear testimony in favor of, and in opposition to, the project. At the request of the applicant's legal counsel, the Planning Commission continued the hearing to August 22, 2005 and directed staff to prepare a resolution upholding the appeal and denying the proposed Design Review Clearance. On August 22, 2005, the Planning Commission held a public hearing to consider the modified resolution and to hear public testimony, including that from the applicant's legal counsel.

- V. 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 15303, Class 3(e) because the construction of a building that is accessory to a single-family residence would not result in significant adverse environmental effects.
- VI. WHEREAS the Marin County Planning Commission finds that the applicable bases for appeal can be sustained and that findings for a Design Review Clearance cannot be made for the proposed project pursuant to Marin County Code Section 22.42.020.B.7 based on the following factors.
- A. The proposed scope of work is not minor and incidental to the residential use of the property. By connecting the pool house and the garage, the proposed patio cover would result in one continuous, 2,706 square foot detached accessory structure that is located on a very visible hillside property which has been designated by the Countywide Plan as a Ridge and Upland Greenbelt area. Required railings on the front edge of the structure would further add to the appearance of bulk and mass for this structure. Consequently, the structure results in visual impacts on surrounding residential properties and the Sleepy Hollow/Terra Linda Open Space Preserve.
  - B. By connecting the pool house and the garage with the patio cover, the resulting accessory building would occupy an area that is disproportionate to the size of the usable outdoor yard area on the property.
  - C. The concrete and steel design of the proposed patio cover is incompatible with the type of construction, scale, and design of other residential structures in the surrounding neighborhood. Additionally, the floor area for the patio cover would increase the total building area on the property to over 7,500 square feet, which would be larger than similarly-situated and sized properties in the immediate neighborhood.
  - D. Extensive grading of the rear yard has been completed both within the area that is covered by the patio cover and in the rear yard above the patio cover, as evidenced by the construction of a 10-foot, 9-inch tall retaining wall and level pad area located above and to the rear of the patio cover.
  - E. The proposed landscaping would not adequately screen the patio cover without requiring ongoing maintenance to ensure that views from the adjoining upslope property at 475 Fawn Drive would not be adversely affected.
  - F. The proposed installation of a wooden screen around the air conditioning units on top of the roof of the garage is inappropriate and may amplify the noise levels emanating from the equipment to surrounding properties. An alternative location for the air conditioning units next to the residence or garage would be appropriate.
  - G. Overall, the proposed work is inconsistent with the purpose of Design Review as set forth in Marin County Code Section 22.42.010 and in Findings A through F above because: (1) the development does not utilize a high quality site or architectural design; (2) the development interferes with the public's ability to enjoy the beauty of the surrounding built and natural environments; (3) the exterior appearance of the proposed development is not compatible or harmonious with the design, scale, and context of the surrounding properties; and (4) the development would result in adverse visual effects on the surrounding environment resulting from an inappropriate development, design, and site placement.

VII. WHEREAS the Marin County Planning Commission finds that the proposed work would result in a large level pad in the rear yard of the property which is inconsistent with the Planning Commission's findings contained in Resolution PC 04-001 that denied a prior request from the applicant to modify the design of rear yard to accommodate a level play area. The previous decision was based on the extent of grading that would be involved and the resulting inherent incompatibility with the natural topography of the hillside setting.

## **SECTION II: ACTION**

NOW, THEREFORE BE IT RESOLVED that the Marin County Planning Commission hereby upholds the Seltzer appeal and denies the Pappas Design Review Clearance (DC 06-3).

NOW THEREFORE BE IT FURTHER RESOLVED that the Marin County Planning Commission recommends that no final inspection be granted for any portion of the development on the property until the property owner brings all of the site improvements into conformance with the current County-approved plans for the property by removing the patio cover and restoring the area occupied by the cover to a landscaped terrace as shown in the original approved plans for the property, regrading the area above the patio cover and restoring the pre-existing natural condition as shown on the original approved plans for the property extended to the easterly rear property line, relocating the rooftop-mounted air conditioning units to a lower location next to the residence or garage; OR obtaining approval from the County for, and implementing, a revised plan. The Planning Commission recommends that the work be completed prior to October 15, 2005.



NOW THEREFORE BE IT FURTHER RESOLVED that the Marin County Planning Commission recommends that all future new structures and physical improvements that are subject to the requirements of Design Review pursuant to Marin County Code Section 22.42.020.A shall be subject to the noticing requirements of Marin County Code Chapter 22.118, and shall be heard by the Planning Commission.

**SECTION III: APPEAL RIGHTS**

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 September 1, 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 22nd day of August, 2005, by the following vote to wit:

AYES: ALL

---

STEVE C. THOMPSON, CHAIRMAN  
MARIN COUNTY PLANNING COMMISSION

Attest:

---

Kim Shine, Recording Secretary

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

CG

Continued 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 homes 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.

(This item was continued from the July 28, 2005, meeting.)

Director Hinds stated that the applicant's attorney has requested a continuance.

*M/s Greenberg/Ginalski to continue the hearing on the Martha Appeal to a time uncertain.*

*Motion passed 7/0.*

4b. Vlahos Design Review Status

Deputy Director Crawford informed the Commission that according to the Department of Public Works (DPW) staff, the applicant's civil engineer has prepared an erosion control plan that is expected to be submitted to the County after the property owner has reviewed it.

5a. and 5b. Field Trips

The Lawson's Landing field trip is scheduled for September 6, 2005, from 1 p.m. to 3 p.m.

The Redwood Landfill field trip is scheduled for September 20, 2005, from 1 p.m. to 3 p.m. with three commissioners attending.

The Commission adjourned at 3:43 p.m. for the reception honoring former commissioner Allan Berland.