

MARIN COUNTY PLANNING COMMISSION HEARING MINUTES

September 12, 2005

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

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

Commissioners Absent: Don Dickenson

Staff Present: Alex Hinds, Agency Director
Brian Crawford, Deputy Director of Planning Services
Eric Steger, Senior Civil Engineer, Department of Public Works
Anna Camaraota, Planner
Tim Haddad, Environmental Coordinator
Kim Shine, Recording Secretary

Minutes Approved on: September 26, 2005

Convened at 1:07 p.m.
Adjourned at 6:01 p.m.

1. INITIAL TRANSACTIONS

- a. Incorporate Staff Reports into Minutes

M/s Holland/Julin to incorporate the staff reports into the minutes. Motion passed 6/0/1.

- b. Continuances – None

- c. Brown Act Video – The Commission viewed the Brown Act video provided by the County Administrator’s Office.

- d. Approval of Minutes – August 22, 2005

M/s Holland/Julin to approve the minutes of August 22, 2005, as corrected. Motion passes 6/0/1.

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 as follows:

- The comment period for the Redwood Landfill DEIR has been extended for two weeks.
- CDA is working with outside consultants to prepare the CDA Organizational Assessment.
- The Youssefirad Appeal will be heard by the Board of Supervisors on September 13, 2005.
- First reading of the Single Family Energy Efficiency Ordinance will be heard by the Board of Supervisors on September 13, 2005.

Deputy Director Crawford notified the Commission that the Engle project, a paper street extension in Tam Valley, has been withdrawn, as the applicant did not submit funding for the environmental impact report the Commission required.

5. FUTURE AGENDA ITEMS AND FIELD TRIPS

September 26, 2005

- Telford Appeal of Telford Coastal Permit/Design Review
- Antonioli Development Plan/Lot Line Adjustment

October 10, 2005

- Redwood Landfill Final EIR
- Kidson Appeal of the Kidson Certificate of Compliance
- Shlesinger/McEvoy Appeals of McEvoy Use Permit/Design Review

October 24, 2005

- Ghafoori Design Review
- Douglas Design Review
- Pace/Labovitz Appeal of Hillenbrand Coastal Permit/Design Review/Merger

November 14, 2005

- Mease Land Division/Precise Development Plan
- Vlahos Design Review
- Mount Tam Cemetery Master Plan

Public hearing to consider the Bruce and Joanne Friedman Land Division application proposing to divide an approximately 2.35-acre parcel located along the western side of Legend Road in the community of Sleepy Hollow into two lots. The property is currently developed with a single-family residence, pool, and pool shed. As proposed, the Land Division would result in two parcels; the first (occupied by the existing residence) would be approximately one acre in size, and the second (currently occupied by the pool and pool shed) would be approximately 1.32 acres in size. The subject property is located at **90 Legend Road, San Anselmo**, and is further identified as **Assessor's Parcel 176-221-02**.

Commissioner Greenberg recused herself from this item due to a potential conflict of interest.

Staff summarized the staff report and recommended that the Planning Commission review the administrative record, conduct a public hearing, and move to adopt the attached resolution denying the Bruce and Joanne Friedman Land Division application.

The Commissioners asked staff to elaborate on the following points:

- Potential privacy impacts resulting from possible future development
- Regulations regarding subdivision of land in the Ridge and Upland Greenbelt
- Whether the project conforms with the policies of the Marin Countywide Plan
- Grading on the property
- Lot size and slope of the property
- The size of the proposed house
- Zoning and the minimum frontage required by the Development Code

The hearing was opened to the public.

Applicant Bruce Friedman and Ken Kurtzman, the architect representing the applicant, addressed the Commission and raised the following concerns:

- perceived inaccuracies in the staff report
- the project conforms with the character of the neighborhood
- the project conforms with the Marin Countywide Plan
- proximity of the proposed development to the existing house is common in the neighborhood
- the property contains several hundred trees, and the applicant is amenable to replacing the six trees which would be removed
- the proposed new home would meet all county ordinance requirements
- the new lot would be developable, buildable, and reasonably accessible
- the project meets the height limit and the minimum frontage requirements
- project meets or exceeds all requirements of the R1-BD Sleepy Hollow ordinances
- disagreement with the method staff used to calculate the slope of the lot
- the development would require very little excavation
- the project leaves the Ridge and Upland Greenbelt intact

The public hearing was closed.

Chairman Thompson noted that the computations submitted by the applicant's architect to determine the percentage of slope count the length of the first contour interval at the bottom of the site, which is incorrect, and the staff's method of measuring the slope is flawless.

In response to the Commission, Deputy Director Crawford clarified the following issues:

- The building height is measured from the natural or finished grade, whichever is more restrictive. In this particular case, the height was measured from the bottom of the lowest floor of the foundation.
- “Excavation” is defined as making a cut into the ground to remove soil from a site, “fill” is used to describe depositing fill on the site to create a building pad, and “grading” is a more general term that could mean either excavation or fill.
- In Sleepy Hollow there is a specialized rule that is a function of zoning rather than Title 24, and it requires a 100-foot minimum frontage for parcels that are 15,000 square feet or less.
- Because the property has been developed as a single building site, given the location of the existing site improvements, the building envelope of the subdivided parcel would be constrained compared to other lots in the Sleepy Hollow subdivision.

Commissioner Julin stated that she would support the staff recommendation to deny the land division application because she is opposed to creating irregular lots, and believes the Commission should act based on respect for the land and respect for County policies that have developed over time, which she would like to uphold. Also, she recommended that the project’s non-compliance with the R-1:B-D zoning district standards regarding minimum lot size based on slope should be stricken as a basis for denial of the project.

Commissioner Barner stated that he agreed with Commissioner Julin and would support the staff’s recommendation to deny the application. In regard to Finding 4.B, which applies to the removal of trees, he feels the applicant made a valid argument because there are numerous trees on the site, and therefore that finding should be excluded in the final resolution.

Commissioner Holland stated that he would support staff’s recommendation to deny the application, because existing development was for a single family residence and it should remain a single family lot to preserve the integrity of community. In addition, he felt that the parcel would be difficult to develop because the lot is located on a curve of an extremely narrow street.

Commissioner Ginalski applauded the staff’s manner in dealing with the application, and stated that he would vote to deny the application because the proposed siting of the lot doesn’t fit into the residential character and feel of the Sleepy Hollow neighborhood.

Commissioner Thompson stated that he would support staff’s recommendation to deny the application because the slope of the site would require an enormous amount of excavation, and he believes that the 100-foot frontage requirement in Sleepy Hollow should be upheld.

M/s Julin/Holland to adopt the resolution denying the Bruce and Joanne Friedman Land Division Application for 90 Legend Road in San Anselmo with the following modifications to the resolution:

- Finding IV.B, which addresses the tree removal issue, shall be stricken.
- The last sentence in Finding VI.A shall be modified to remove the reference to tree removal, as follows: *“In addition, the project would result in the creation of a new residential lot with a building area occupying a steep hillside (average 43.76 percent), where substantial grading would need occur to accommodate future residential development”*
- The first paragraph under Finding VI.D.6, which addresses non-compliance of the application with the R-1:B-D (Sleepy Hollow Community Standards) Zoning District

standards regarding minimum lot size based on slope as a basis of denial, shall be stricken.

Chairman Thompson conducted a roll call vote and the motion passed 5/0/2 (Commissioner Greenberg recused and Commissioner Dickenson absent). This decision may be appealed to the Board of Supervisors within ten calendar days.

The Commission recessed at 3 p.m. and reconvened at 3:10 p.m.

MARIN COUNTY PLANNING COMMISSION

RESOLUTION PC05-013

A RESOLUTION DENYING THE BRUCE AND JOANNE FRIEDMAN LAND DIVISION
90 LEGEND ROAD, SAN ANSELMO
ASSESSOR'S PARCEL 176-221-02

SECTION I: FINDINGS

- I. WHEREAS Kenneth Kurtzman, on behalf of Bruce and Joanne Friedman, has submitted an application to divide an approximately 2.32-acre parcel located along the western side of Legend Road in the community of Sleepy Hollow into two lots. The property is currently developed with a single-family residence, pool, and pool shed. As proposed, the Land Division would result in two parcels; the first (occupied by the existing residence) would be approximately one acre in size, and the second (currently occupied by the pool and pool shed) would be approximately 1.32 acres in size. The subject property is located at **90 Legend Road, San Anselmo**, and is further identified as **Assessor's Parcel 176-221-02**.
- II. WHEREAS the Marin County Planning Commission held a duly-noticed public hearing on September 12, 2005, to consider the merits of the project, and hear testimony in favor of, and in opposition to, the project.
- III. WHEREAS the Marin County Planning Commission finds that the California Environmental Quality Act (CEQA) does not apply to projects that are disapproved pursuant to Section 15270 of the CEQA Guidelines. Due to the following findings of project inconsistency with applicable County policies and zoning requirements, the Planning Commission finds that the project could not be approved as proposed.
- IV. WHEREAS the Marin County Planning Commission finds that the proposed project is inconsistent with the goals and policies contained in the Marin Countywide Plan (CWP), as specified below.
 - A. The proposed project would result in the creation of a new residential lot (proposed Lot 2) that is impractical for improvement due to irregular configuration, steepness of terrain, and location within a Ridge and Upland Greenbelt, because it would result in a constrained building envelope that could not be developed in a manner which is compatible with the character of the immediate neighborhood; (Policies EQ-3.8, EQ-3.18, EQ 3-19, and EQ-3.20)
 - B. The proposed project would result in the creation of a new residential lot with a building area occupying a steep hillside (average 43.76 percent) where substantial grading would need to occur to accommodate future residential development. (Policy EQ-3.16)
- V. WHEREAS the Marin County Planning Commission finds that the project could not be redesigned to comply with the development policies contained in the CWP because the Land Division would necessarily rely on an irregular lot configuration in order to comply with minimum lot area requirements.

VI. WHEREAS the Marin County Planning Commission finds that mandatory findings for approval of a Land Division, pursuant to Marin County Code Section 22.84.060, could not be made for the project, as follows.

- A. Required findings for approval. The review authority may approve a Tentative Map only when it shall first find that the proposed subdivision, together with the provisions for its design and improvement, is consistent with the Marin Countywide Plan, Local Coastal Program, and any applicable Community Plan and Specific Plan, and that none of the findings for denial in Subsection D below (Findings Requiring Denial) can be made. The findings shall apply to each proposed parcel as well as the entire subdivision, including any parcel identified as a designated remainder in compliance with Map Act Section 66424.6.**

As indicated above in Finding IV, the project is not consistent with the Marin Countywide Plan because the project would result in the creation of a new residential lot that is impractical for improvement due to its irregular configuration, steepness of terrain, and location within a Ridge and Upland Greenbelt. These conditions would result in a constrained building envelope that could not be developed in a manner which is compatible with the character of the immediate neighborhood. (Policies EQ-3.8, EQ-3.18, EQ 3-19, and EQ-3.20) In addition, the project would result in the creation of a new residential lot with a building area occupying a steep hillside (average 43.76 percent), where substantial grading would need occur to accommodate future residential development (Policy EQ-3.11, Policy EQ-3.14, and Policy EQ-3.16)

- B. Supplemental findings. In addition to the findings required for approval of a Tentative Map by Subsection A. above (Required Findings for Approval), the following findings are also required when they are applicable to the specific subdivision proposal.**

- 1. It is in the interest of the public health and safety, and it is necessary as a prerequisite to the orderly development of the surrounding area, to require the construction of road improvements within a specified time after recordation of the Parcel Map, where road improvements are required (see Section 22.82.080).**

Not applicable. The property is located on an improved public right-of-way.

- 2. Any findings required by Sections 22.88.030 (Condominium Conversions) for condominium conversions.**

Not applicable. The project does not consist of a condominium conversion.

- C. Findings for waiver of Parcel Map. If waiver of a Parcel Map has been requested with the Tentative Map application, the review authority shall determine whether the findings required by Section 22.86.030 (Waiver of Parcel Map) can also be made.**

Not applicable. The applicant has not requested a waiver of a Parcel Map in conjunction with this application.

- D. Findings requiring denial. As required by Map Act Section 66474, a Tentative Map shall be denied if the review authority makes any of the following findings:**

1. **The proposed subdivision including design and improvements is not consistent with the Marin Countywide Plan or an applicable Community Plan or Specific Plan.**

Refer to finding A above.

2. **The site is not physically suitable for the type or proposed density of development.**

As indicated above in Finding VI.A and Finding IV, the project would result in a constrained building envelope that could not be developed in a manner which is compatible with the character of the immediate neighborhood (Policies EQ-3.8, EQ-3.18, EQ 3-19, and EQ-3.20). In addition, conceptual plans submitted by the applicant demonstrate the apparent difficulty in designing a residence that meets the 30-foot maximum height standard required by the governing R-1:B-D zoning district.

3. **The design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or injure fish or wildlife or their habitat.**

Review of the Natural Diversity Data Base Maps on file with the Marin County Community Development Agency (CDA) did not reveal that the subject property is located in an area that is inhabited by special status species of plants or animals.

4. **The design of the subdivision or type of improvements is likely to cause serious public health or safety problems.**

The Ross Valley Sanitary District has reviewed the plans and has indicated that the project would have no impact on the public sanitary sewer. The Marin Municipal Water District has reviewed the plans and has indicated that the subdivision would be eligible for water service upon request and fulfillment of District requirements. Finally, the Department of Public Works has reviewed the plans and has indicated that an easement must be shown on the tentative map to accommodate PG&E facilities serving the site. Therefore, the project does not conflict with this finding.

5. **The design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large for access through or use of, property within the proposed subdivision. This finding may not be made if the review authority finds that alternate easements for access or use will be provided, and that they will be substantially equivalent to ones previously acquired by the public. This finding shall apply only to easements of record, or to easements established by judgment of a court of competent jurisdiction, and no authority is hereby granted to the review authority to determine that the public at large has acquired easements of access through or use of property within the proposed subdivision.**

Not applicable. No easements for public access through, or for use of the property have been identified on the property.

6. **The proposed subdivision is not consistent with all applicable provisions of this Development Code, any other applicable provisions of the County Code, and the Map Act.**

Contrary to the Hillside Subdivision Design standards set out in Marin county Code Section 22.82.050.C.3, the new residential lot is impractical for improvement due to the steepness of terrain, the significant amount of grading expected with future development, the removal of trees, and the constrained size of the proposed building area due to the narrow panhandle portion of the proposed lot and the Ridge and Upland Greenbelt situated in the upper elevations of the property. Preliminary site plans and cross sections showing development of the new residential lot demonstrate the difficulty in developing the property in compliance with the 30-foot maximum height standard required by the governing R-1:B-D (Sleepy Hollow Community Standards) Zoning District standards.

SECTION II: ACTION

NOW, THEREFORE BE IT RESOLVED that the Marin County Planning Commission hereby denies the Bruce and Joanne Friedman Land Division based on the inability to make affirmative findings that the project is consistent with the goals and policies of the Marin Countywide Plan and the County's zoning and subdivision ordinances.

SECTION III: 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, Room 308, Civic Center, San Rafael, no later than **4:00 p.m. on September 22, 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 12th day of September 2005, by the following vote to wit:

AYES: Barner, Berland, Ginalski, Holland, Thompson
NOES: None
ABSENT: Dickenson, Greenberg (recused)

STEVE C. THOMPSON, CHAIR
MARIN COUNTY PLANNING COMMISSION

Attest:

Kim Shine
Recording Secretary

7. DRAFT ENVIRONMENTAL IMPACT REPORT FOR MASTER PLAN, COASTAL PERMIT, AND TIDELANDS PERMIT: LAWSON'S LANDING

Public hearing to receive testimony regarding the Lawson's Landing Draft Environmental Impact Report for the Lawson's Landing Master Plan, Coastal Permit, and Tidelands Permit applications ("project"). The primary focus of the project are the existing recreational uses and changes proposed thereto, located on approximately 180 acres in the southwestern corner of the 850+ acre property. Those uses include a 233-space travel trailer and recreational vehicle park, a 1,000-vehicle campground, and associated services, facilities, and activities. Proposed modification to the recreation-related facilities and activities include modifications to the existing water storage and distribution facilities, sewage disposal facilities, remodeling and replacing structures and other facilities on the property, circulation changes on and to the property, and modifications to various recreational activities and programs. The project also includes the existing agricultural (grazing) use occurring over a majority of the property, sand quarrying on approximately 39 acres of the property, and six existing residences and two proposed new residences on the property. The subject property's address is **137 Marine View Drive, Dillon Beach**, and is further identified as **Assessor's Parcel 100-100-48 et al**. Zoning on the property is C-RCR (Coastal, Resort and Commercial Recreation), and C-APZ-60 (Coastal, Agricultural, Production Zone, one unit per 60 acres).

Tim Haddad, Environmental Coordinator, summarized his staff report dated September 12, 2005, and recommended that the Commission conduct a public hearing to receive testimony regarding the adequacy of the Draft Environmental Impact Report.

The hearing was opened to the public.

The following people addressed the Commission regarding the adequacy of the DEIR:

Jack Jacinto, Dillon Beach resident
Nancy Vogler and Mike Lawson, applicants
Rick Johnson, Inverness resident
Scott Hochstrasser, representing Cliff Street homeowners
J.D. Davis, Kyburz resident
Ed Vallejo, representing downtown Tomales business owners
Nona Dennis, representing Marin Conservation League
Charles Miller, Dillon Beach resident
Bob Soost, representing the Marin Chapter of the California Native Plant Society
Jeff Stafford, Dillon Beach resident
Barbara Salzman, representing the Marin Audubon Society
Skip Schwartz, representing the Audubon Canyon Ranch
Nancy Stetson, Dillon Beach resident
Scott Miller, Dillon Beach resident
Doug Shaffer, Cloverdale resident
Mervyn Zimmerman, Marshall resident
Roger Roberts, representing the Marin Conservation League
Catherine Caufield, representing the Environmental Action Committee

Issues raised during the public hearing portion of the meeting included:

- Owners have been good stewards of the land, diligently maintaining natural resources
- Affordable public access is consistent with the Coastal Act of 1972
- All people deserve to have access to the beach, not just the wealthy
- Baseline should be reviewed regarding actual use vs. peak use

- Increased onsite sewage treatment would result from replacing pumped portable restrooms with permanent restrooms
- Traffic impacts within Dillon Beach need to be considered, including safety of pedestrians/bicyclists and emergency vehicle access
- Impacts to environmentally-sensitive areas are inadequately addressed, including snowy plover nesting grounds, sand dunes, native grasses, and wetlands
- Area businesses depend on tourist traffic
- Community dialogue would be productive
- Avoidance of adverse impacts should be first choice for mitigation
- Noise levels need to be addressed
- Sand mining activity needs to be adequately described
- Use should be balanced with protecting natural resources
- Illegal or detrimental uses should not have a legal nonconforming status
- DEIR is fundamentally inadequate; should be based on current, actual data, including analysis of secondary impacts and alternatives; revised to better identify significant impacts and appropriate mitigations; and then recirculated.

The public hearing was closed.

The Commission recessed at 5:02 p.m., and reconvened at 5:15 p.m.

In response to the Commission's request, staff elaborated on the master planning process.

Commission members expressed appreciation for the public input.

Commissioner Greenberg noted that the DEIR gives inadequate information beyond that given for the 180-acre recreational site and the active sand dune site. She expressed her concern that the DEIR uses the project proposal as the baseline, rather than actual use, and said that should be corrected. Also, the growth-inducing aspects of more water on the site, the increased wastewater treatment capacity, the road improvements, and the entry improvements must be discussed in the DEIR. Water quality has not been studied in the wetlands area through which the effluent will flow and that issue needs to be addressed. The suggestion to provide a natural resources alternative is a good one. The traffic impacts and mitigations offered need to be considered. The systemic flaw of the DEIR is the project baseline and the difference between what the project is proposing and what is actually happening on the site.

Commissioner Barner questioned how much the site is being used and the potential for increased use. The DEIR does not mention global warming, which should be discussed in the context of hazards. He would like more information about the beach grass, i.e., whether recovery of a portion of the site is possible, and wants to explore the idea of having a combined effort with other agencies for a demonstration project to illustrate whether the beach grass can be reduced. He agreed with Commissioner Greenberg that the volume of wastewater has to be determined in order to evaluate the site the consultants are proposing vs. the site the applicants are proposing. He further said that if the Commission were looking at this project at the Master Plan level, the normal process would be to evaluate it as if there were nothing on the site, but what is being proposed already exists. As a result of that discussion, he concluded that what is being proposed (i.e., existing improvements) is too much for the site, and believes the DEIR does not address that issue.

Commission Julin requested that the Commission be provided with a map of the modified natural resources alternative so that what is being proposed can be evaluated relative to the underlying environmental constraints.

Commissioner Holland noted that the applicants have amply demonstrated their interest in stepping lightly on the land. His view of the baseline issue is that it should reflect the existing physical environment, such as buildings and roads, as it existed at the time of the NOP in 2002, plus the impacts from usage that had occurred up to that time. Regarding the wastewater issue, the assumption that there will be no increase in wastewater to be treated is flawed. He further stated that he believes the DEIR needs to be significantly overhauled and possibly recirculated.

Commissioner Ginalski agreed that it is necessary to find a balance between recreational uses and the environmental impacts and, where possible, enhance the environmental conditions at the site. He agreed that the baseline needs to be revamped, and the interpretation of the legal meaning of "baseline" in this context has led to conclusions in the DEIR which may or may not be in the best interests of the Dillon Beach community. He stated that the DEIR needs to be recirculated, but expressed his concern for what impact the delay will have on the project site.

Chairman Thompson stated that he supported Commissioner Greenberg's position regarding the baseline measurement system not being an accurate reflection of use at the initiation of the EIR process, and supported the matter being continued to examine this issue further and get a legal opinion from the County Counsel as to what he considers to be the legal entitlements.

Staff noted that the 57-day review and comment period for the Lawson's Landing DEIR would close on Friday, September 16, 2005.

M/s Barner/Julin to continue discussion of the Lawson's Landing DEIR to October 10, 2005.

Motion passed 6/0/1 (Dickenson absent).

The meeting was adjourned at 6:01 p.m.