

MARIN COUNTY PLANNING COMMISSION HEARING MINUTES

November 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, Director
Brian Crawford, Deputy Director of Planning Services
Christine Gimmler, Senior Planner
Johanna Patri, Senior Planner
Curtis Havel, Planner
Eric Englebart, Planner
Eric Steger, Senior Civil Engineer, Department of Public Works
David Hansen, Planning & Acquisition Manager, Parks & Open Space Dist.
Kim Shine, Recording Secretary

Minutes Approved on: December 12, 2005

Convened at 10:10 a.m.

Adjourned at 6:15 p.m.

1. INITIAL TRANSACTIONS
 - a. Incorporate Staff Reports into Minutes
M/s Julin/Holland to incorporate the staff reports into the Minutes. Motion carried 7/0/0.
 - b. Continuances
Item 7 – Zerull Use Permit and Design Review Appeal
Staff told the Commission that the applicant requested a continuance.
 - c. Approval of Minutes – November 14, 2005
M/s Julin/Holland to approve the minutes of November 14, 2005, as amended. Motion carried 7/0/0.
2. COMMUNICATIONS – The Commission acknowledged receipt of several pieces of correspondence.
3. DIRECTOR'S REPORT
Planning items going before the Board of Supervisors before the end of the year:
 - Kidson Appeal of the Commission's issuance of a Certificate of Compliance
 - Sorokko EIR consultant contract for the Sorokko subdivision in Tiburon
4. OPEN TIME FOR PUBLIC EXPRESSION (LIMITED TO THREE MINUTES PER SPEAKER) - *None*
5. FUTURE AGENDA DISCUSSION ITEMS, FIELD TRIPS
 - **December 5, 2005**
 - Las Cumbras Site Visit
 - **December 12, 2005**
 - Vlahos DR
 - Las Cumbras DR/Initial Study
 - **January 9, 2006 (mid to late a.m. start)**
 - Marin County Cemetery Company
 - Hillenbrand Appeal CP/DR/Merge
 - Rosenberg UP,DR appeal
 - Weber merger appeal
 - Community plan amendment: Stinson Beach (tentative)
 - **January 23, 2006**
 - Cingular Wireless MP
 - Community plan amendment: Stinson Beach (tentative)

Continued public hearing to consider the Douglas Design Review application proposing to construct an addition to an existing 8,965 square foot residence on the 2.01 acre subject property. The proposed project would add 5,155 square feet of additional living area to the residence, including a 3,087 square foot addition to the existing lower floor and a 2,068 square foot addition to the main floor of the building. Approximately 1,500 square feet of the existing structure would also be remodeled. The proposed two story addition would attain a maximum height of 23 feet above existing grade and 26.3 feet above finished grade, with a maximum roof ridge height over 6 feet lower than the existing residence. The proposed addition would be sited 30 feet or more from all surrounding property lines. All exterior materials and colors are proposed to match the existing structure. According to the application, the project has been designed to achieve Platinum-level compliance with the Marin County Green Building Residential Design Guidelines, including the use of solar energy and water heating systems. The property is governed by conventional R-R:B-3 zoning. However, Design Review is required due to the size of the residence. The subject property is located at 126 Hill Drive, Kentfield, and is further identified as Assessor's Parcel 071-021-19.

This item was continued from the meeting on October 24, 2005.

Staff presented the Commission with an updated staff report and summarized the results of the hydrological analysis which was done at the request of the Commission on October 24, 2005. Staff recommended that the Commission review the results of the hydrological analysis, conduct a public hearing, and adopt the recommended resolution approving the Douglas Design Review application.

Staff responded to questions from the Commission regarding the hydrological study; the issue of downhill drainage onto neighbors' properties; the location of the existing cistern and above-ground water tank; the proposed use of dissipaters; design issues in terms of the size of the house as related to the size of the property; and whether a condition of approval could be imposed to prohibit the subdivision of the subject property in the future. Deputy Director Crawford advised the Commission that the subdivision issue could be addressed by putting a statement into the record that, given the size of the expanded residence and the other development on the property, the property is not well-suited for subdivision.

Irving Swartz of ILS Associates and engineer for the applicant, gave a presentation regarding the results of the hydrological analysis to the Commission.

The public hearing was opened.

The following people addressed the Commission in support of the project, citing the following issues: conformance to County requirements; the hydrological analysis was completed at the Commission's request and showed no net runoff increase from the project; the project will not impair or interfere with the enjoyment of surrounding properties; the project will minimize or eliminate adverse physical effects, including those that might be produced by drainage improvements; it is not incumbent on the applicant to solve existing drainage issues in the neighborhood; the project as proposed will not exaggerate, worsen, or cause drainage problems in the neighborhood; the drainage problems for the downhill neighbors result from drainage work done on downhill properties and the antiquated public drainage system; and the evidence before the Commission includes no engineering data which show that the project will be detrimental to the surrounding neighborhood:

- Adam Posard, applicant's architectural representative
- Peter Brekhus, land use attorney

The Commissioners asked for clarification regarding portions of the hydrological analysis; the possibility of placing a deed restriction on the property to prevent future subdivision of the main parcel as long as the 14,000+ square foot house remains; green building design aspects of the project; gray water irrigation from the water in the cistern; and the effects of the drainage dissipaters.

- Martin Gottlieb, 25 Hill Drive, addressed the Commission to state his concerns relating to the project: there has been a drainage problem on his property since 1986; he installed a catch basin at his expense to deal with debris caused by the previous improvements on the Douglas property, but the catch basin can't handle the increased runoff; the property owners have improved the neighborhood and his objection to the project is because of drainage issues; the ratio of pervious to impervious surfaces will significantly increase from 35% to 48%; the drainage system in the area is substandard and inadequate; and he believes there will be an increase in water coming down onto his property if this project is approved.

The public hearing was closed.

The Commission discussed the possibility of imposing a condition of approval that would prohibit future subdivision of the property, because the appropriateness of the very large home is directly related to the special circumstances of the site. The condition would require that, prior to issuance of a building permit, the applicant record a deed restriction specifying that no subdivision of Assessor's Parcel #071-021-19 shall occur as long as a home of 14,000 square feet or more remains on the property. Director Hinds said that requiring that the two-acre lot not be subdivided would be reasonable and valid given the size of the residence. The applicant's representative agreed to discuss the matter with the applicant.

The Commission further discussed the drainage systems located on the two-acre parcel; the downhill drainage problems; and the effect of an increase of impermeable surfaces.

The applicant's representative said that he was unable to contact the property owner, but based on prior discussions with the owner, he believed the property owner would agree to the deed restriction condition for the developed two-acre lot.

Commissioner Dickenson said that with the totality of the information received by the Commission, he could make the finding to approve the project with a reasonably good assurance that the project would not make the drainage situation worse.

Commissioner Julin reiterated the importance of considering the drainage issue from the standpoint of whether the rate of runoff would be increased.

M/s Julin/Greenberg to approve the staff recommendation to adopt the resolution approving with conditions the Douglas Design Review Application.

Commissioner Dickenson proposed amending the motion to include the specific wording that, because the appropriateness of this very large home is directly related to the specific circumstances of the site, prior to issuance of a building permit, the applicant shall record a deed restriction specifying that no subdivision of Assessor's Parcel 071-021-19 shall occur as long as a house of at least 14,000 square feet remains on the property. The mover and seconder of the motion agreed.

Commissioner Dickenson noted that in terms of the merits of the Design Review application, the size of the large home is appropriate in this case, because the home, in spite of its size, will be well-screened and the applicant has done a good job of landscaping the property and utilizing the property in a creative manner.

Commissioner Greenberg concurred with Commissioner's Dickenson's comments, and stated that her approval was based on the expert testimony received by the Commission that there would be no net increase in the rate of runoff from this addition. She cautioned staff about administratively approving a project which involves an associated property, especially one owned by the same party, but said it was clear to her the drainage problems associated with the one-acre parcel cannot be addressed with this application. Finally, she expressed her opinion that the proposed addition will benefit the owners and the neighborhood, and said she was prepared to support the motion as amended by Commissioner Dickenson.

Commissioner Barner complimented the architect of the existing house and proposed addition in terms of design, especially considering the difficult topography. Commissioner Julin agreed.

Chairman Thompson conducted a roll call vote, and the motion carried 6/0/1, with Chairman Thompson abstaining based on the size of the house.

The Commission recessed at 11:55 a.m. and reconvened at noon.

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. PC05-017

A RESOLUTION APPROVING WITH CONDITIONS THE DOUGLAS DESIGN REVIEW
ASSESSOR'S PARCEL 071-021-19
126 HILL DRIVE, KENTFIELD

SECTION I: FINDINGS

- I. WHEREAS, the applicant, Posard-Broek & Associates, on behalf of the owners, Kevin and Michelle Douglas, is requesting Design Review approval to construct an addition to an existing 8,965 square foot residence on the 2.01-acre property. The proposed project would add 5,155 square feet of additional living area to the residence, including a 3,087 square foot addition to the existing lower floor and a 2,068 square foot addition to the main floor of the building. Approximately 1,500 square feet of the existing structure would also be remodeled. The proposed two-story addition would attain a maximum height of 23 feet above existing grade and 26.3 feet above finished grade, with a maximum roof ridge height 6.7 feet lower than the existing residence. The proposed addition would be sited 30.5 feet from the nearest property line along Hill Drive, and over 100 feet from all other property lines. All exterior materials and colors are proposed to match the existing structure. The project has been designed to achieve Platinum-level compliance with the Marin County Green Building Residential Design Guidelines, including the use of solar energy and water heating systems. The subject property is located at **126 Hill Drive, Kentfield** and is further identified as **Assessor's Parcel 071-021-19**.
- II. WHEREAS, the Marin County Planning Commission held duly noticed public hearings on October 24, 2005, and November 28, 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 proposed project is Categorically Exempt from the requirements of the California Environmental Quality Act, per Section 15301, Class 1, of the CEQA Guidelines because it entails the construction of additions to a single-family residence that would not result in tree removal, adverse grading, or other potentially significant impacts to the environment.
- IV. WHEREAS, the Marin County Planning Commission finds that the proposed project, as modified by conditions of approval, would be consistent with the goals and policies of the Marin Countywide Plan and the Kentfield/Greenbrae Community Plan as follows:
 - A. The proposed residential addition is consistent with permitted uses within the SF3 (Single-Family Residential, one unit per 1 to 5 acres) land use designation.
 - B. The project is consistent with the Countywide Plan's Ridge and Upland Greenbelt policies because the proposed addition attains a lower height than the existing residence, would be well screened by existing vegetation, would preserve all existing trees on the wooded site; and would not result in adverse visual effects to the surrounding area.
 - C. The project would not impact any streams or drainages, consistent with Countywide Plan's Stream Conservation Area policies.
 - D. The project would comply with Marin County standards for flood control, geotechnical engineering, and seismic safety, and include improvements to protect lives and property from hazard.

- E. The proposed project would result in a minor amount of grading (approximately 300 cubic yards) which would not be excessive for the moderately sloping property.
 - F. The project would not result in significant impacts to existing drainage facilities, and the project would not expose people or property to significant flood hazards;
 - G. The project would not cause significant impacts on existing, available public services and utilities, such as water supply, police and fire protection, solid waste disposal, sewage disposal, schools, traffic and circulation, or other services.
- V. WHEREAS, the Marin County Planning Commission finds that the proposed project is consistent with the mandatory findings for a Design Review (Section 22.82.040 of the Marin County Code) and the design standards contained in the Single-Family Residential Design Guidelines as described below.

Site Design

As required by the Design Guidelines, the proposed project would be integrated with the natural environment, compatible with the surrounding neighborhood, and respectful of natural systems. The proposed development would not result in the removal of any existing trees on the site. The project has also been designed to result in a minimal amount of grading. Approximately 20 percent of the proposed additional living area would be created by filling in an existing understory area below the south terrace, which would not require grading or enlarge the existing building footprint. The new western wing of the residence has been sited to take advantage of the existing terrain where the site slopes down away from the residence. Construction in this area would result in approximately 300 cubic yards of excavation. However, this excavation would allow the lower level of the new wing to be located partially below grade, which would serve to reduce the visibility of the structure. Finally, there are no streams or other drainage courses on site which would be affected by the project.

Building Envelopes

The proposed project would not alter the exterior character of the site or adversely impact the sense of space, light, or openness between the property and adjacent roadways or homes. The proposed addition maintains large setbacks (100 feet or more) from most property lines. In addition, the western elevation of the new addition, which is the closest point of the addition to a property line (at 30.5 feet), has been designed to comply with the 20-foot height limit recommended for portions of structures within the “stepback zone”. The upper floor of the new wing addition is a full floor level lower than the existing residence, resulting in a structure that steps up the hillside. Finally, the proposed development would be almost completely screened from surrounding roadways and residences by an extensive amount of perimeter landscaping.

Neighborhood Compatibility

The property is located in an area that is generally characterized by sizable “estate” homes located on large (half acre or more) lots, which are typically well screened by mature landscaping and vegetation. The two-acre property is consistent with this character, and is almost completely screened from view by extensive perimeter plantings including mature oaks, acacias, bays and redwoods. Furthermore, the project has been designed and sited with careful consideration of the natural features of the site, incorporates setbacks, stepbacks, and building massing appropriate to its hillside setting, and would not interfere with existing views or privacy enjoyed by surrounding properties. Accordingly, the project would not result in adverse impacts on the visual character of the community. Although the proposed project would result in a residence that is substantially larger than the median home size in the surrounding neighborhood, the subject property is also more than twice the size of the average lot. Therefore, the proposal would result in a total floor area ratio (18.2 percent) that is consistent with the floor area ratios of several other properties in the vicinity. Furthermore, as noted above, the property is unique in comparison to most nearby properties with respect to its extensive perimeter landscaping which

provides almost complete screening for the existing residence and the proposed addition from public streets and surrounding properties. Accordingly, the project would have no or minimal impact to public and private views. Finally, as noted above, the project has been designed to avoid all tree removal, and to result in minimal grading, thus reducing impacts to the natural environment. For these reasons, staff finds that the project would be compatible with the existing neighborhood character despite its unusually large size. However, this finding could not be made if the property was subdivided and another residence was constructed on the property. To ensure that the approved development remains consistent with other homes in the vicinity with respect to floor area ratio, conditions of approval stipulate that further subdivision of the property shall not be permitted as long as a residence greater than 8,964 square feet exists on the property.

Visual Bulk

The proposed project would conform with the Design Guidelines related to visual bulk. The proposed addition steps down the slope from the existing residence, with a maximum roof height that is 6.7 feet lower than the existing structure, and the roofline has been divided into smaller segments such that the longest unbroken roofline is 29 feet in length, well within the recommended 50 foot limit. Approximately half of the lower floor of the addition would be sited below grade, where it would not contribute to the visual bulk of the structure, and there are no unbroken vertical walls on the addition that exceed a height of 20 feet. Furthermore, the portion of the additional living area created within existing understory area would not contribute to the visual bulk of the structure. The visual bulk of the proposed addition would not be visually prominent from off-site locations due to the size of the property and the extensive existing site landscaping. Finally, the nearest residences with partial views of the project are located a significant distance from the subject property (over 500 feet) and well above the site in elevation (close to 100 feet), and the view from these homes of limited portions of the roof of the new addition would be consistent with views of the existing residence as well as the other homes in the vicinity.

Green Building Design

The proposed project has been designed to achieve Platinum-level compliance with the Marin County Green Building Residential Design Guidelines through a number of measures including the use of solar energy and water heating systems, Forest Stewardship Council certified wood and reclaimed lumber, the collection of roof drainage for landscape irrigation, and the installation of energy efficient windows and doors. The proposed photovoltaic energy system would consist of flush mounted panels mounted on the western facing roof of the new addition, where they would be completely screened from off-site locations by existing landscaping. Accordingly, the project would achieve the highest level of compliance with the guidelines related to green building measures.

SECTION II: CONDITIONS OF PROJECT APPROVAL

NOW THEREFORE, BE IT RESOLVED that the Marin County Planning Commission hereby approves the Douglas Design Review subject to the following conditions:

Community Development Agency – Planning Division

1. Pursuant to Marin County Development Code Section 22.42, this Design Review approval authorizes the construction of 5,155 square feet of additions to an existing 8,965 square foot residence on the 2.01-acre property (including a 3,087 square foot addition to the existing lower floor and a 2,068 square foot addition to the existing main floor). The approval also authorizes the remodeling of approximately 1,500 square feet of the existing structure. The approved two-story addition would attain a maximum height of 23 feet above existing grade and 26.3 feet above finished grade, with a maximum roof ridge height 6.7 feet lower than the existing residence. As approved, the addition would be sited 30.5 feet from the nearest property line along Hill Drive, and over 100 feet from all other property lines. The subject property is located at **126 Hill Drive, Kentfield**

and is further identified as **Assessor's Parcel 071-021-19**.

2. Exterior materials and colors for the approved addition shall match the existing residence.
3. Except as modified by these conditions, the plans submitted for a Building Permit shall substantially conform to plans on file with the Marin County Community Development Agency identified as "Exhibit A," entitled, "Douglas Residence," consisting of 19 sheets prepared by Wendy Posard & Associates, submitted July 22, 2005.
4. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall revise the site plan or other first sheet of the office and job site copies of the Building Permit plans to list these conditions of approval as notes.
5. BEFORE ISSUANCE OF A BUILDING PERMIT, the property owners shall record a notarized deed restriction stipulating that further subdivision of the subject property (APN 071-021-19) shall not occur as long as a single-family residence greater than 8,964 square feet exists on the property.
6. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall submit a signed Statement of Conformance demonstrating that the project qualifies for a "Platinum" rating under the Marin Green Home: Remodeling Green Building Residential Design Guidelines. The Building Permit shall include specifications demonstrating compliance with all construction-related measures that are used to meet the "Platinum" rating.
7. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall revise the plans to depict the location and type of all exterior lighting for review and approval of the Community Development Agency staff. Exterior lighting visible from off site shall be permitted for safety purposes only, shall consist of low-wattage fixtures, and shall be directed downward and shielded to prevent adverse lighting impacts on nearby properties. Exceptions to this standard may be allowed by the Community Development Agency staff if the exterior lighting would not create night-time illumination levels that are incompatible with the surrounding community character and would not shine on nearby properties.
8. BEFORE FOUNDATION INSPECTION, the applicant shall have a licensed land surveyor or civil engineer with proper certification conduct a survey of the front property lines and install property line markers that can be readily verified by the Building and Safety Inspection staff to verify building setbacks and submit a written (stamped) confirmation to the Planning Division confirming that the staking of the property lines has been properly completed. In addition, it is recommended that the required setback lines be clearly marked by stakes similar to batter boards that are installed at the foundation corners. The requirement for new survey markers may be waived if proper survey markers already exist at the site and can be used by the Building and Safety Inspection staff to definitely measure building setbacks.
9. BEFORE ISSUANCE OF A BUILDING OR GRADING PERMIT for any work, the applicant shall install temporary construction fencing around the dripline of the existing trees in the vicinity of any area of grading, construction, materials storage, soil stockpiling, or other construction activity. The fencing is intended to protect existing vegetation during construction and shall remain until all construction activity is complete. The applicant shall submit a copy of the temporary fencing plan and site photographs confirming installation of the fencing to the Community Development Agency.
10. BEFORE ISSUANCE OF A BUILDING OR GRADING PERMIT, the applicant shall submit a report prepared by a licensed arborist which certifies the adequacy of the protective fencing installed and which identifies additional mitigation measures, if necessary, for review and approval by the Community Development Agency, prior to commencement of grading or construction.
11. The applicant shall retain the services of a licensed arborist or landscape architect to inspect the project site during construction activities. All site development construction practices shall be in accord with the recommend guidelines contained in the required arborist's report. The applicant shall comply with

recommendations made by the licensed professional with respect to tree protection during construction activities, general tree care practices, and long-term vegetation management to ensure continued viability of the site's native vegetation.

12. All construction activities shall comply with the following standards:
 - a. Construction activity is only permitted between the hours of **7:00 a.m. and 6:00 p.m., Monday through Friday**, and **9:00 a.m. and 5:00 p.m. on Saturday**. No construction shall be permitted on Sundays and the following holidays (New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day). Loud noise-generating construction-related equipment (e.g., backhoes, generators, jackhammers) can be maintained, operated, or serviced at the construction site from 8:00 a.m. to 5:00 p.m. Monday through Friday only. Minor jobs (e.g., painting, hand sanding, sweeping) with minimal or no noise impacts on the surrounding properties are exempted from the limitations on construction activity. At the applicant's request, the Community Development Agency staff may administratively authorize minor modifications to these hours of construction.
 - b. It shall be the responsibility of the applicant to ensure that all construction materials and equipment are stored on-site (or secured at an approved off-site location) and that all contractor vehicles are parked in such a manner as to permit safe passage for vehicular, pedestrian, and bicycle traffic at all times.
13. All utility connections and extensions (including but not limited to electric, communication, and cable television lines) serving the development shall be undergrounded from the nearest overhead pole from the property, where feasible as determined by the Community Development Agency staff.
14. The applicant/owner hereby agrees to defend, indemnify, and hold harmless the County of Marin and its agents, officers, attorneys, or employees from any claim, action, or proceeding, against the County or its agents, officers, attorneys, or employees, to attack, set aside, void, or annul an approval of (description of project being approved), for which action is brought within the applicable statute of limitations. This indemnification shall include, but not be limited to, damages, fees, and/or costs awarded against the County, if any, and the cost of suit, attorney's fees, and other costs, liabilities, and expenses incurred in connection with such proceedings, whether incurred by the applicant/owner, the County, and/or the parties initiating or bringing such proceeding.
15. Any changes or additions to the project shall be submitted to the Community Development Agency in writing for review and approval before the contemplated modifications may be initiated. Construction involving modifications that do not substantially comply with the approval, as determined by the Community Development Agency staff, may be required to be halted until proper authorization for the modifications are obtained by the applicant.
16. BEFORE FINAL INSPECTION, the applicant shall submit a signed Statement of Completion confirming that the project has been constructed in compliance with all of the measures that were used to meet the "Platinum" rating under the Marin Green Home: Remodeling Green Building Residential Design Guidelines.

Marin County Department of Public Works - Land Use and Water Resources Division

17. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall submit the following information and details on the Building Permit plans:
 - a. The plans must be reviewed and approved by a Registered Soils Engineer. Certification shall be either by the engineer's wet stamp and original signature on the plans, or by wet stamp and signed letter
 - b. A Registered Civil Engineer shall design the site/driveway retaining walls, drainage, and grading plans.

Plans must have the engineer's original signature and wet stamp.

- c. A separate Building Permit is required for site/driveway retaining walls with a height of more than 4 feet (or 3 feet when backfill area is sloped or has a surcharge).
- d. Submit Erosion and Siltation Control plans. Plans shall indicate total acreage of site disturbance.
- e. Provide a drainage plan for the project which includes the installation of perforated horizontal "spreader" pipes as recommended by ILS Associates in their letter and site plan of November 10, 2005 (Exhibit "B").
- f. Note on the plans that the Design Engineer/Architect shall certify to the County in writing that all grading, drainage, and retaining wall construction was done in accordance with plans and field directions. Also note that driveway, parking, and other site improvements shall be inspected by a Department of Public Works engineer.
- g. An Encroachment Permit shall be required for construction within the road right-of-way.

Kentfield Fire Protection District

18. BEFORE FINAL INSPECTION, the applicant shall provide confirmation from the Fire Marshal that all requirements of the Kentfield Fire Protection District have been met.

Marin Municipal Water District

19. All landscape and irrigation plans must be designed in accordance with the most current District landscape requirements (Ordinance 385). Prior to providing water service for new landscape areas, or improved or modified landscape areas, the District must review and approve the project's working drawings for planting and irrigation systems.

Ross Valley Sanitary District

20. If not already installed, the District requires that the side sewer be equipped with an appropriate backwater prevention device (e.g., Contra Costa valve, as warranted by the individual site conditions).
21. After the project is approved, the owner or contractor should contact the District to arrange for a District Inspector to approve the existing installation (or approve the plans for the proposed installation) of the backwater prevention device(s) and to make a record for the District's files.

SECTION III: VESTING AND APPEAL RIGHTS

NOW, THEREFORE BE IT RESOLVED that the applicant must vest this Design Review approval by securing a Building Permit, performing substantial work, and incurring substantial liabilities in good faith reliance upon the permit by, November 28, 2007 or all rights granted in this approval shall lapse unless the applicant applies for an extension at least 30 days before the expiration date above and the Director approves it. Design Review extensions for a total of not more than four years may be granted for cause pursuant to MCC Section 22.82.130.

The Building Permit approval expires if the building or work authorized is not commenced within one year from the date of such permit. All permits shall expire by limitation and become null and void if the building or work authorized by such permit is not completed within two years from the date of such permit. If the Building Permit lapses after the vesting date stipulated in the Design Review approval (and no extensions have been granted), the Building Permit and Design Review approvals may become null and void.

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

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 December 2005, by the following vote to wit:

AYES: BARNER, DICKENSON, GINALSKI, GREENBERG, HOLLAND, JULIN

NOES: NONE

ABSTAIN: THOMPSON

STEVE C. THOMPSON, CHAIR
MARIN COUNTY PLANNING COMMISSION

Attest:

Kim Shine
Recording Secretary

7. USE PERMIT AND DESIGN REVIEW APPEAL: ZERULL

CH

Public hearing to consider the Zerull Appeal of the Deputy Zoning Administrator's denial of the Zerull Use Permit and Design Review applications to construct a two-story, 3,321 square foot detached accessory structure on an approximately 1.4-acre lot within the Bayside Acres Subdivision, San Rafael. The proposed detached accessory structure would have a maximum height of 28 feet. In summary, the appellant sets forth the following bases of appeal: (1) the Single-Family Residential Design Guidelines should not apply to the project since it was accepted as complete before the adoption of said guidelines; (2) neither staff nor the Deputy Zoning Administrator provided the Zerull's with an opportunity to modify the proposed project; (3) the findings denying the application are subjective in nature and not based on factual information; and (4) the project is not visually prominent from off-site locations and is not incompatible with the surrounding neighborhood because the denial does not take into account the size and configuration of the subject property with respect to other properties in the area. The subject property is located at 233 Bayview Drive, San Rafael, and is further identified as Assessor's Parcels 186-071-06 and -07.

Staff informed the Commission that the applicant requested a continuance of this item to February 13, 2006, but noted that a presentation was prepared for the Commission's review.

The public hearing was opened.

The applicant's representative, Monty Georgeson, told the Commission the applicant requested a continuance. He invited feedback from the Commissioners, and inquired about the timing of putting up the newly-configured story poles and providing access to the property for Commissioners.

The Commission agreed that the staff report should be presented at the meeting of February 13, 2006. The Commission noted several issues regarding the staff report and the proposed resolution.

M/s Dickenson/Barner at the applicant's request to continue the public hearing on the Zerull Appeal of the Deputy Zoning Administrator's denial of the Zerull Use Permit and Design Review, to the meeting of February 13, 2006. The motion carried 7/0/0.

The Commission adjourned for lunch at 12:13 p.m. and reconvened at 1:32 p.m.

Public hearing to consider the Hasson Appeal of the Deputy Zoning Administrator's approval of the Eastwood Park Design Review application to consider site improvements to Eastwood Park. Many of the improvements have been designed so that the park will comply with the Americans with Disabilities Act. The improvements include a new five foot wide pedestrian trail, play equipment, minor site grading, play area fencing, irrigation and drainage, turf and trees, and a permanent 12'8" x 10'8" x 10'6" tall unisex restroom, as well as other site improvements as shown on the approved plan sets. The permanent restroom would be constructed in the same location as an existing portable restroom facility. The permanent restroom would contain a locking mechanism that would prevent access to the restroom after sunset. Eastwood Park is located at the intersection of Eastwood Way and Glenwood Ave in Mill Valley and is further identified as Assessor's Parcels 049-074-25. The site was purchased for use as a community park by the Tamalpais Community Services District in 1971 and has been in continual use as a park since that time.

Staff summarized the staff report and recommended that the Commission review the administrative record, conduct a public hearing, and deny the Hasson Appeal and sustain the Community Development Agency's conditional approval of the Tamalpais Community Services District Eastwood Park Design Review.

The Commission asked for clarification regarding the responsible fire agency; the location of the existing sewer main and the sewer connection for the proposed permanent restroom; and the locking device for the permanent restroom.

The public hearing was opened.

Barbara Hasson, representing the appellant, asked that the rustic nature of the park be preserved while providing safety and accessibility for all the members of the surrounding community. She raised the issues of the neighbors' desire for minimal changes beyond replacing the play structure and the path to the structure; the costs associated with installation and maintenance of the permanent restroom; the possibility that the restroom might be a target for vandals; whether the asphalt path would encourage skateboarding; and possible alternatives to the use of asphalt for the path.

The following Tamalpais Community Service District (TCSD) representatives summarized the TCSD approval process and addressed the Commission regarding TCSD's desire that the park be a good experience for all visitors and residents; the experience of other parks with locking permanent restrooms; issues of accessibility; the location of the sewer; and how the permanent restroom would be maintained.

- Jim Jacobs, President, TCSD
- Phillip Abey, Abey and Associates, designer representing TCSD
- David Schnee, Group 4 Architecture Research and Planning, subconsultant to Abey and Associates
- Linda Johnson, TCSD board member
- Jon Elam, General Manager of TCSD

Richard Skaff, Mill Valley resident, addressed the Commission regarding compliance of the project with the Americans with Disabilities Act (ADA) and elaborated on how accessibility issues in the park should be addressed.

The following people spoke to the Commission regarding their opposition to the development of Eastwood Park, and raised the following issues: The TCSD decision-making process was flawed; development would make the park a "destination" park; the proposed 5-foot wide asphalt path would be an attractive nuisance for skateboarders, and would obstruct other recreational activities; the permanent restroom facility will attract homeless people and encourage illegal campsites.

- Karen Walter, Tam Valley Neighborhood Assn.
- Marcia Harp, Mill Valley
- Amy Mitchell, 612 Eastwood Way, Mill Valley
- Marilyn Koschalk, 620 Eastwood Way, Mill Valley

The following people addressed the Commission in support of the project and raised the following issues: Having a permanent restroom is crucial for people with children; the park is difficult to find and would not become a destination park; a firm surface is suitable for making the park accessible to everyone; the design is appropriate to the neighborhood; the project needs to be approved without any further delay so that the play equipment will be in place for children to use:

- Cynthia Koehler, 838 Marin Drive, Mill Valley
- Susan Hayes, Parks & Recreation Commission
- Robert Horowitz, Mill Valley
- Mary Ann Kim, Mill Valley
- Barbara Calvert-Frankel
- Otto von Franque, 671 Northern Avenue, Mill Valley
- Kerry Shea Loder, 805 Denise Court, Mill Valley

The following people spoke to the Commission about the project in general and urged the neighbors to not let the issue divide the community:

- Frank Cruz, 326 Robin Road, Mill Valley

The public hearing was closed.

The Commission discussed the accessibility issues of the project and ADA requirements, the maintenance of the proposed permanent restroom, whether skateboarding could be prohibited; and the location, width, and type of material suitable for the path;

Commissioner Ginalski said this project is an example that the process has worked, in that divergent points of view were considered and a plan developed to make the community better for everyone who lives there. He agreed that public park facilities should have running water and that the proposed restroom is appropriate. He stated that the pathway should accommodate all members of society, and that the project should move forward as soon as possible.

Commissioner Greenberg expressed support for staff's recommendation that the path be composed of asphalt, because scientific evidence has shown that alternate surfaces have proven inadequate over the long term, but recommended that the width of the path be reduced to the minimum allowed by California law – 4 feet. She suggested that if the park attracts skateboarders to the extent that they are using it for a skateboard park, residents could ask TCS D for appropriate restrictions, and voiced her agreement that the play structure needs to be in place as soon as possible. She accepted the TCS D manager's assurance to the Commission that the permanent restroom would be properly maintained, and recommended approval of the proposed resolution with the exception that the width of the path be reduced to 4 feet.

Commissioner Dickenson stated his opinion that the project is modest and very appropriate for the setting, and will increase the usability of the park for local residents. The applicant has worked with the neighbors to respond to their concerns and has already modified the plans in that regard. He noted that the applicant is a public agency whose responsibility is to provide a recreation facility, and it is not the Commission's role to design the park nor address the issue of the cost of the proposed project. Further, the application is proposed by a local, elected agency, it is supported by the Tam Design Review Board, and he would have no problem approving the plan as proposed by the applicants and previously approved by staff.

Commissioner Holland pointed out that many of the arguments expressed in public testimony and letters of opposition to the project are not under the jurisdiction of the County or the Planning Commission. The project meets County standards and guidelines and is in conformance with County codes, it is modest and reasonable, and he intended to support a motion to approve staff's recommendation.

Commissioner Barner emphasized the importance of sanitary engineering, and noted that the issue of hygiene is critical in places where people are playing and eating, e.g., a birthday party in the park. He expressed his support for the permanent restroom with hand washing facilities and stated he would support a motion to deny the Hasson appeal.

Commissioner Julin said that she supports staff recommendation. She applauded the people of the community for their involvement and concern for the community.

Chairman Thompson noted his concern that the ADA requirements may change in the future, and what is built today may not meet those requirements. Mr. Skaff pointed out that future changes in ADA requirements would not affect this project's compliance unless the built pathway is removed, in which case the new path would have to meet the ADA requirements in place at that time.

M/s Dickenson/Holland to deny the Hasson Appeal and sustain the Community Development Agency's approval of the Eastwood Park Design Review, including the proposal that the path be 5 feet wide.

Chairman Thompson voiced his opinion that if a path 4 feet wide with turnouts every 200 feet is legal, he saw no reason to approve a 5 foot wide path. He also noted that the park, in his opinion, will be a destination park because of the lack of other parks nearby.

Commissioner Holland said he saw no need for turnouts because people could easily step off the path into the grass. He asked that a correction to Condition XIII of the proposed resolution be made to change Marin County Fire Department to Southern Marin Fire Protection District, and further noted that the numbering of the conditions in the proposed resolution needed to be corrected. Commissioner Greenberg also noted a few typographical errors to be corrected in the final resolution.

Chairman Thompson called for a roll call vote.

The motion carried with a 5/2/0 vote, with Commissioners Greenberg and Thompson dissenting because of the width of the path.

The decision is final unless it is appealed within ten calendar days to the Board of Supervisors.

The Commission recessed at 3:35 p.m. and reconvened at 3:45 p.m.

MARIN COUNTY PLANNING COMMISSION

RESOLUTION NO. PC05-018

A RESOLUTION DENYING THE HASSON APPEAL AND SUSTAINING THE
COMMUNITY DEVELOPMENT AGENCY'S APPROVAL OF THE EASTWOOD PARK DESIGN REVIEW
DM 05-86
627 EASTWOOD WAY, MILL VALLEY
ASSESSOR'S PARCEL 049-074-25

SECTION I: FINDINGS

- I. WHEREAS The Tamalpais Community Services District (TCSD) is requesting Minor Design Review (DM 05-86) approval in order to carry out site improvements to Eastwood Park. Many of the improvements have been designed so that the park will comply with the Americans with Disabilities Act. The improvements include a new five foot wide pedestrian trail, play equipment, minor site grading, play area fencing, irrigation and drainage, turf and trees, and a permanent unisex restroom, as well as other site improvements as shown on the approved plan sets. The proposed restroom has a floor area of approximately 70 square feet with an approximately 60 square foot covered entrance area and would have maximum height of 10.5 feet. The permanent restroom would be constructed in the same location as an existing portable restroom facility. The permanent restroom would contain a locking mechanism that prevents access to the restroom after sunset. Eastwood Park is located at the intersection of Eastwood Way and Glenwood Ave in Mill Valley and is further identified as **Assessor's Parcels 049-074-25**. The site was purchased for use as a community park by the Tamalpais Community Services District in 1971 and has been in continual use as a park since that time.
- II. WHEREAS on August 31, 2005, the Community Development Agency issued a conditional approval of the TCSD Eastwood Park Design Review granting authorization for the above improvements.
- III. WHEREAS, a timely appeal of the Community Development Agency's approval of the TCSD Eastwood Park Design Review has been filed by Thomas Hasson asserting the following issues: "1) Not a minor change as vestment in play structure was never perfected by compliance with Marin County Planning Resolution requiring that play structure be handicapped accessed within 1 year of 12-16-1991. Play structure has been removed, thus this is not a minor change; 2) Considerable opposition to permanent public restroom of nearly 100% of neighbors whose properties are on the boundaries of the neighborhood park; 3) The character of the park and the neighborhood will be permanently changed in a manner not reflective of resident's desire to preserve the rustic nature of the community, 4) The process of decision-making was flawed and not conducted in a transparent manner, 5) Possible negative impact of project on properties surrounding the park. This may come about through increased noise, traffic, sight views, and making park more desirable for homeless. 6) There has been disregard for public input. This encompasses requests to: A) Repair structures already in place. B) Size (width) and composition (materials) of ADA path to be installed. C) Move path away from field. D) Discuss and review the installation of permanent restroom. E) Refusal to incorporate surface that discourage skateboarding as was demanded at public meetings for park design. F) Provide information about maintenance schedules for park and permanent restroom. G) Provide cost information for permanent restroom – failed to perform cost analysis though directed to do so by Board of Directors."
- IV. WHEREAS the Marin County Planning Commission held a duly noticed public hearing on November 28, 2005 to consider the merits of the project and appeal,
- V. WHEREAS the Marin County Planning Commission finds that this project is Categorically Exempt from

the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15302, class 2 and Section 15303, class 3 of the CEQA Guidelines because it entails renovations and upgrades in equipment to an existing park, primarily for the purpose of bringing the park into compliance with the Americans with Disabilities Act. The new facilities would have substantially the same purpose and capacity as those that currently exist on site.

- VI. WHEREAS the Marin County Planning Commission finds that the proposed project is consistent with the Marin Countywide Plan and the Tamalpais Community Plan for the following reasons:
- A. The redevelopment of a community park is consistent with the OA (Open Area) land use designations;
 - B. The project complies with Marin County Stream Conservation Area (SCA) policies that specifically allow the reconstruction of existing uses as well as the construction of trails within the SCA (Policy EQ 2.4). The project is consistent with the County's SCA policies because the proposed restroom will replace an existing restroom in the same location (i.e. without further encroachment into the SCA) and the proposed access improvements are limited to minor modifications to an existing pathway. Both of these project components are permitted by the underlying OA zone;
 - C. The project complies with Marin County standards for flood control, geotechnical engineering, and seismic safety, and include improvements to protect lives and property from hazard;
 - D. The project complies with governing development standards related to roadway construction, parking, grading, drainage, flood control and utility improvements as verified by the Department of Public Works;
 - E. The project will not cause significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation, or other services;
 - F. The project complies with the Community Plan policies that parcels maintain current densities;
 - G. The project complies with the Community Plan policies to provide adequate on-site parking;
 - H. The project complies with Community Plan policies that require a landscape plan for all projects that require Design Review;
- VII. WHEREAS the Marin County Planning Commission finds that the proposed project is consistent with all of the mandatory findings to approve the TCSD (Eastwood Park) Design Review application (Section 22.42.060 of the Marin County Code) as specified below.
1. **The proposed development will properly and adequately perform or satisfy its functional requirements without being unsightly or creating incompatibility/disharmony with its locale and surrounding neighborhood.**

The project can be found consistent with the above finding because the proposed work would not substantially alter the existing intensity or use of the site. The property has historically been used as a public park and would continue to be used as such following completion of the project. The project components are primarily designed to accommodate the requirements of the Americans with Disabilities Act as well as to advance the health, safety, convenience and welfare of the public who makes use of the park. Therefore, the project would not be incompatible with its locale.

2. **The proposed development will not impair, or substantially interfere with the development, use, or enjoyment of other property in the vicinity, including, but not limited to light, air, privacy, and views, or the orderly and pleasing development of the neighborhood as a whole, including public lands and rights-of-way.**

The project will not impact view, light, air, and privacy of surrounding residences or public areas because the project is for the redevelopment of an existing park. The proposed changes will not result in any new structural development that is substantively more intensive than that which has historically existed on site. The proposed improvements will not diminish light, air, privacy, or views currently available to surrounding residents.

3. **The proposed development will not directly, or cumulative, impair, inhibit, or limit further investment or improvements in the vicinity, on the same or other properties, including public lands and rights-of-way.**

The project will not directly or in a cumulative fashion impair, inhibit, or limit further investment or improvements in the vicinity because the proposed development is consistent with allowed uses in the OA zone district and will not detract from the harmonious development of the neighborhood.

4. **The proposed development will be properly and adequately landscaped with maximum retention of trees and other natural features and will conserve non-renewable energy and natural resources.**

The proposed project can be considered consistent with the above finding because the project will ultimately result in an increase in the amount of landscaped areas on site. Furthermore, the existing and proposed landscaping will assist with the stabilization and prevention of the erosion of graded soils on site.

5. **The proposed development will be in compliance with the design and locational characteristics listed in Chapter 22.16 (Planned District Development Standards) of the Marin County Development Code.**

The design of the proposed project will respect the site's natural environment while also making the property accessible to disabled members of the public. The project will not encroach onto adjoining private properties, public lands, or private and public easements and rights-of-way, and adequate parking will be provided for the public using the parklands. As discussed in Findings VII 1 and 2 above, the proposal will not inhibit the use or enjoyment of other properties in the immediate vicinity of the project site.

6. **The proposed development will minimize or eliminate adverse physical or visual effects which might otherwise result from unplanned or inappropriate development, design, or placement. Adverse effects include those produced by the design and location of characteristics of the following:**

- a. **The area, heights, mass, materials, and scale of structures;**

The project will not result in adverse effects in regard to area height, mass, or materials, as the project proposes minimal expansion of the structural development that has always existed on site. More specifically, the site has historically contained playground equipment and will continue to contain playground equipment in the exact same location. Additionally, the proposed restroom will be finished with natural cedar lap siding and dark grey asphalt shingles, thus maintaining the rustic character of the park setting.

b. Drainage systems and appurtenant structures;

The drainage system for the project has been preliminarily reviewed and accepted by the Department of Public Works. As part of the Building Permit review, the Department of Public Works will review the grading and drainage plans to ensure that the project incorporates drainage systems that will adequately collect, convey and distribute surface run-off into appropriate drainage systems.

c. Cut and fill or the reforming of the natural terrain, and appurtenant structures (e.g. retaining walls and bulkheads);

The project will require minimal grading. Furthermore, much of the proposed grading is for the purpose of installing the proposed ADA accessible trail.

d. Areas, paths, and rights-of-way for the containment, movement or general circulation of animals, conveyances, persons, vehicles, and watercraft; and

The development on the property will not interfere with the containment, movement, or circulation of animals, conveyances, or persons. In fact, the project will further enhance the ability of persons to navigate the parkland by providing a stable, level and accessible pathway interconnecting the major areas of the park.

e. Will not result in the elimination of significant sun and light exposure, views, vistas, and privacy to adjacent properties.

The project involves minimal structural development beyond that which has historically existed on site. As such, the project will not result in the elimination of sun and light exposure, views, vistas, or privacy of adjacent properties.

7. The project design includes features which foster energy and natural resource conservation while maintaining the character of the community.

The project will foster energy and natural resource conservation because it is simply for the redevelopment of an existing park. No intensive energy consuming uses are proposed on site

8. The design, location, size, and operating characteristics of the proposed use are consistent with the Countywide Plan and applicable zoning district regulations, are compatible with the existing and future land uses in the vicinity, and will not be detrimental to the public interest, health, safety, convenience, or welfare of the County.

The project will be consistent with policies and programs in the Countywide Plan because the project involves the redevelopment of an existing park. The project is consistent with the site's general plan designation of OS (Open Space) as well as its OA (Open Area) zoning. Additionally, the project will not result in any substantive changes to its historic use as a public park. The project also complies with Marin County Stream Conservation Area (SCA) policies that specifically allow the reconstruction of existing uses as well as the construction of trails within the SCA (Policy EQ 2.4). The project is consistent with the County's SCA policies because the proposed restroom will replace an existing restroom in the same location (i.e. without further encroachment into the SCA) and the proposed access improvements are limited to minor modifications to an existing pathway. Both of these project components are permitted by the underlying OA zone;

VIII. WHEREAS the Marin County Planning Commission finds that the bases for the Hasson appeal cannot be sustained and that the Community Development Agency acted appropriately in issuing the TCSD (Eastwood Park) Design Review due to the following factors:

1. *Not a minor change as vestment in play structure was never perfected by compliance with Marin County Planning Resolution requiring that play structure be handicapped accessed within 1 year of 12-16-1991. Play structure has been removed, thus this is not a minor change.*

Response to Appeal:

The appellant references a condition of approval that was applied to the project site by the Planning Commission as part of the previous Design Review approval for installation of playground equipment in 1991. The condition specifically stated:

“In order to vest their rights in this design review approval, the applicant shall submit written verification that the play equipment incorporates handicapped access which complies with the governing requirements. If the TCSD has to construct new improvements to provide handicapped access, they shall first submit revised plans for review and approval by the Marin County Planning Department.”

The appellant claims that the handicapped accessibility was never completed on site, as required by the above condition. However, the playground equipment to which this condition was applied was ultimately removed from the site. The applicants are now proposing new equipment on site that would be handicapped accessible and have appropriately applied for review and approval of the new equipment through the Marin Community Development Agency. As such, approval of the currently proposed Design Review application would bring the project site into compliance with the intent of the above condition and with handicapped accessibility requirements.

2. *Considerable opposition to permanent public restroom of nearly 100% of neighbors whose properties are on the boundaries of the neighborhood park.*

Eastwood Park has had a restroom facility adjacent to the tennis courts for many years, albeit in a portable structure. As part of its proposal, the TCSD proposes to place a permanent restroom in the exact same location as the existing portable restroom facility. Staff’s approval of this facility was primarily aligned with the basic goals of promoting the health, safety, and convenience of the public. From a public policy perspective, the replacement of portable restrooms with permanent facilities results in several significant public benefits. One such benefit relates to the fact that portable restrooms typically have to be emptied by pumper truck on a regular basis. When this process takes place, there can be leakage of both chemicals and/or effluent waste as the contents of the restroom are transferred to the disposal truck. As the existing portable restroom is in fairly close proximity to a tributary of Coyote Creek, minimizing such potential contamination of the County’s water quality is clearly in the public’s interest. Additionally, permanent restrooms provide a facility for washing one’s hands – a convenience that is not provided by the current portable facilities. The park contains playground equipment, barbecue facilities, as well as a tennis court and basketball court, and it is visited by persons of all ages, including families with children. As such it is logical and reasonable for the public to have a place to wash up after using these amenities.

Furthermore, after consultation with Ron Paolini - Deputy Director of Parks and Landscaping for the County of Marin, staff was informed that the County’s Parks Department tries to install permanent restrooms in parks whenever possible. In addition to permanent facilities providing a

convenience to the public, the Parks Department has found that the portable restrooms tend to be a less desirable alternative, and often result in members of the public relieving themselves in the woods or in other adjacent areas because they can find the portable restroom to be unsanitary. This trend is particularly true with children who often find themselves at eye level with the facility's urinals. While the immediate surrounding residents have the convenience of being able to use their own private restrooms in their adjacent private residences, residents of the greater Tamalpais Valley who use Eastwood Park do not have this ability and would therefore be able to make use of a permanent restroom. Accordingly, it is not surprising that neighbors with no need to use such a facility would fail to see or appreciate the benefit, if not need, for such a facility. Many of the adjacent property owners have voiced strong opposition to any improvements to the site that would make the park more desirable to the public at large because they feel that Eastwood Park should be provided exclusively for the use of the immediately surrounding neighborhood and do not welcome the use of the park by members of the greater Tamalpais Valley.

There is also a significant precedent for the placement of permanent restrooms in parklands throughout Marin County. Staff located at least seven other parks in Marin (including some of similar sizes) that already have permanent restrooms, and there are plans for the installation of permanent restrooms in at least four other parks in the near future. The County Parks Department also informed staff that they have had virtually no additional reported problems related to illicit or homelessness activities as a result of installation of such facilities.

As a means of addressing neighborhood concern that such illicit activities might occur in the proposed permanent restroom, the applicants have agreed to install a locking mechanism on the facility that will automatically prevent access after sunset. The lock will be inspected and the facility will be cleaned five days per week. In summary, the greater public good provided by a permanent restroom facility far outweighs the minimal impacts that such a facility might have on the adjacent community. As such, staff recommends approval of the permanent restroom facility.

3. *The character of the park and the neighborhood will be permanently changed in a manner not reflective of resident's desire to preserve the rustic nature of the community.*

The primary purpose of the proposed project is to replace previously existing playground equipment, to provide the general public with the convenience and sanitary benefits of a permanent restroom, and to bring the park into compliance with the Americans with Disabilities Act and Title 24 (California's Disability Standards). Although these goals, particularly the installation of the asphalt pathway for handicapped access to the site, would moderately increase development in the park, they would not result in substantially greater intensity of use than the current or historic use of the park. Furthermore, the project was reviewed and approved by the Tamalpais Design Review Board (TDRB) – an advisory body whose primary purpose is to review projects for their compatibility with the Tamalpais Valley community, as addressed by the Tamalpais Valley Community Plan. Consequently, staff feels that the purported claims that the project would permanently change the character of the park are unfounded.

4. *The process of decision-making was flawed and not conducted in a transparent manner.*

The appellant makes numerous claims that there was a disregard for public input throughout the processing of this project. However, the majority of these claims relate to the internal decision making processes that occurred at the TCSD. Furthermore, the decision-making process on this project has been highly visible. The TCSD held 16 spirited public meetings as well as four public hearings on the project. Furthermore, the Marin County Community Development Agency (CDA) has no jurisdiction over the decision-making processes and decisions of the TCSD. The administrative decision making process carried out by the CDA was transparent and carried out in a manner fully consistent with the public noticing requirements of the Marin County Development

Code. Staff completed all required public notice including a visible posting on site as well as a mailed notice to all property owners within 600 feet of the proposed project, as is required by the Marin County Development Code. Staff also responded to all phone calls, emails, and requests for information relating to this project. In addition, staff met with numerous members of the public, including the appellants, on several occasions, and responded to all requests for information. At no time during the County's processing of this application was the public prevented from reviewing files, documents, or the decision-making processes in any way

5. *Possible negative impact of project on properties surrounding the park. This may come about through increased noise, traffic, sight views, and making park more desirable for homeless.*

The proposed project is limited to the redevelopment and incremental enhancement of an existing park. The proposed project was reviewed by the County's Department of Public Works (DPW) and it was determined that the project would not necessitate any additional parking requirements, or traffic impact analysis. In fact, the proposed project triggers no quantifiable thresholds with regard to traffic, noise, parking, or visual impacts. The boundaries of the park are not increasing, nor is the height of any facility beyond a few feet. Eastwood Park is a small community facility that is not particularly accessible (i.e. not on a major arterial road). As was discussed in Item 2, above, statements related to the permanent restroom being more appealing to the homeless are unsubstantiated and based on conjecture. At no time has the appellant provided any evidence supporting the claim that a permanent restroom would result in an increased homeless presence. The applicants are proposing to install a locking mechanism on the door that will automatically prohibit access to the restroom after sunset – a feature that does not currently exist on the portable restroom. The applicant has also agreed to have the restroom inspected and cleaned five days per week and the project has been conditioned such that if the self-locking mechanism were ever disabled, it will be the TCSD's responsibility to manually lock the facility until such time as the lock could be repaired. The County has installed permanent restrooms in at least seven other parks in Marin County, and has had no reports of additional homeless presence due to such facilities. Staff finds the claims related to increased negative impacts to be unsubstantiated.

6. *There has been s disregard for public input. This encompasses requests to: A) repair structures already in place. B) size (width) and composition (materials) of ADA path to be installed. C.) Move path away from field. D) discuss and review the installation of permanent restroom. E) refusal to incorporate surface that discourage skateboarding as was demanded at public meetings for park design. F) Provide information about maintenance schedules for park and permanent restroom. G)provide cost information for permanent restroom – failed to perform cost analysis though directed to do so by Board of Directors.”*

Many of the above statements relate to the internal decision making processes of the TCSD that led up to the park improvement project that is being proposed. As discussed in Item 4, above, the CDA is not involved with TCSD's meetings or decision-making processes. The TCSD submitted an application for the redevelopment of Eastwood Park. TCSD, as a community services district authorized and charged with, among other things, development and maintenance of park facilities, is a valid applicant to bring this project forward. Details of their processes are irrelevant to the CDA's review. Staff's duty is to review the proposal for conformity with the Countywide plan, Tamalpais Community Plan, and Development Code. After a thorough review and analysis, staff concluded that the project was indeed consistent with the policies and regulation of the above documents. As such, staff recommends approval of the project. However, because some of the individual points above relate to the design of the project, the discussion below will address in part this particular basis of appeal.

- A) *Repair structures already in place.*

Eastwood Park is owned in fee by the TCSD and managed by its own Parks and Recreation Department. The County of Marin does not directly control issues such as maintenance of Eastwood Park. Prior issues relating to decisions on maintenance of the existing park are presumably reflected in the project for which the TCSD is applying.

B) Size (width) and composition (materials) of ADA path to be installed.

Staff extensively reviewed the size, location, and composition of the proposed pathway. Staff ultimately approved the design as proposed because its primary function is to comply with the Americans with Disability Act (ADA), which requires that an accessible pathway be provided that inter-connects the parking area, the playground area, and the restroom facility. Additionally, ADA requirements mandate that the path be constructed of a material that provides for a stable, firm, and slip resistant surface. Given that the proposed trail must also traverse a change in grade, and be constructed in a manner that holds up over time, the applicant proposed that the pathway be constructed of asphalt (AC), as asphalt and concrete are the best (perhaps only) materials that meet the above requirements, while also minimizing maintenance costs. The TCSD also submitted a study conducted by the United States Forest Service (see Attachment 9), which showed that few alternative trail surfacing materials hold up well enough over time to still allow usage by a wheelchair confined individual. Staff also discussed this issue with Rocky Burks of the Department of Public Works, the County's specialist on ADA compliance issues. Mr. Burks confirmed that concrete and asphalt are the only ADA compliant materials that will hold up over time. Two other materials that can also provide for a firm, stable, and slip resistant surface - terra pave and decomposed granite - require significant additional maintenance. Maintenance issues related to such materials are exacerbated when the pathway is situated upon a slope, as is the case in Eastwood Park.

C) Move path away from field.

The proposed location of the pathway is a function of compliance with the Americans with Disabilities Act. The ADA requires a pathway that would inter-connect the parking area, the playground, and the restroom. The proposed design accomplishes this goal while minimizing the amount of paved surface.

D) Discuss and review the installation of permanent public restroom.

Please see the discussion related to the restroom in Item 2, above.

E) Refusal to incorporate surface that discourage skateboarding as was demanded at public meetings for park design.

By their very nature, surfaces that meet the ADA requirement of being stable, firm, and slip resistant are going to be potentially conducive to skateboarding. The appellant has provided staff with no feasible alternative material that would both meet ADA requirements and simultaneously prevent skateboarding, nor is staff aware of such a material. There is presently no prohibition of skateboarding at Eastwood Park. If the appellant would like such a prohibition, they have the right to lobby the TCSD to implement restrictions on skateboarding.

F) Provide information about maintenance schedules for park and permanent restroom.

The applicant has stated that the restroom will be maintained on a daily basis, Monday through Friday. This daily maintenance requirement has been incorporated as a condition of approval in the recommended resolution.

- G) *Provide cost information for permanent restroom – failed to perform cost analysis though directed to do so by Board of Directors.”*

This relates to an internal TCSD decision and has no bearing on the County’s review process.

SECTION II: PROJECT APPROVAL

NOW, THEREFORE, BE IT RESOLVED that the Marin County Planning Commission hereby denies the Hasson appeal and sustains the Community Development Agency’s conditional approval of the TCSD (Eastwood Park) Design Review subject to the following conditions:

Marin County Community Development Agency - Planning Division

1. Pursuant to Marin County Code Section 22.42.060, the TCSD (Eastwood Park) Design Review DM 05-86 approves the redevelopment of site improvements to Eastwood Community Park, many of which have been designed so that the park will comply with the Americans with Disabilities Act. The improvements include a new five foot wide walking trail, play equipment, grading, play area fencing, irrigation and drainage, turf and trees, and a permanent unisex restroom (to be located in the same location as the existing portable restroom facility) as well as other site improvements as shown on the approved plan sets. The permanent restroom would contain a locking mechanism that disables access to the restroom after sunset. The subject property is located at the intersection of Eastwood Way and Glenwood Ave in Mill Valley and is further identified as **Assessor’s Parcels 049-074-25**.
2. EXCEPT AS MODIFIED BY CONDITIONS OF APROVAL, plans submitted for a building permit shall substantially conform to plans identified as “Exhibit A,” entitled, “Construction Documents for Eastwood Park Landscape Improvements,” consisting of 5 sheets prepared by Abey Arnold Associates, dated April 29, 2005, with revisions dated July 22, 2005 and marked “Exhibit A” and on file with the Marin County Community Development Agency, except as modified by the conditions listed herein.
3. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall revise the site plan or other first sheet of the office and job site copies of the Building Permit plans to list these conditions of approval as notes.
4. If archaeological, historic, or prehistoric resources are discovered during construction, construction activities shall cease, and the Community Development Agency staff shall be notified so that the extent and location of discovered materials may be recorded by a qualified archaeologist, and disposition of artifacts may occur in compliance with State and Federal law. A registered archeologist, chosen by the County and paid for by the applicant, shall assess the site and shall submit a written report to the Community Development Agency staff advancing appropriate mitigations to protect the resources discovered. No work at the site may recommence without approval of the Community Development Agency staff. All future development of the site must be consistent with findings and recommendations of the archaeological report as approved by the Community Development Agency staff. If the report identifies significant resources, amendment of the permit may be required to implement mitigations to protect resources. Additionally, the identification and subsequent disturbance of an Indian midden requires the issuance of an excavation permit by the Department of Public Works in compliance with Chapter 5.32 (Excavating Indian Middens) of the County Code.
5. All construction activities shall comply with the following standards:
 - c. Except for such non-noise generating activities, including but not limited to, painting, sanding, and sweeping, construction activity is only permitted between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday, and 9:00 a.m. and 4:00 p.m. on Saturday. No construction shall be permitted on Sundays or the following holidays (New Year’s Day, Martin Luther King Day, Presidents’ Day, Memorial Day, Independence Day, Labor Day, Veteran’s Day, Thanksgiving,

Christmas). If the holiday falls on a weekend, the prohibition on noise-generating construction activities shall apply to the ensuing weekday during which the holiday is observed. At the applicant's request, the Community Development Agency staff may administratively authorize minor modifications to these hours of construction.

- d. It shall be the responsibility of the applicant to ensure that all construction materials and equipment are stored on-site (or secured at an approved off-site location) and that all contractor vehicles are parked in such a manner as to permit safe passage for vehicular, pedestrian, and bicycle traffic at all times.
6. All utility connections and extensions (including but not limited to electric, communication, and cable television lines) serving the development shall be undergrounded from the nearest overhead pole from the property, where feasible as determined by the Community Development Agency staff.
7. The applicant/owner hereby agrees to defend, indemnify, and hold harmless the County of Marin and its agents, officers, attorneys, or employees from any claim, action, or proceeding, against the County or its agents, officers, attorneys, or employees, to attack, set aside, void, or annul an approval of Design Review # DM 05-86 for park improvements, for which action is brought within the applicable statute of limitations. This indemnification shall include, but not be limited to, damages, fees, and/or costs awarded against the County, if any, and the cost of suit, attorney's fees, and other costs, liabilities, and expenses incurred in connection with such proceedings, whether incurred by the applicant/owner, the County, and/or the parties initiating or bringing such proceeding.
8. BEFORE FINAL INSPECTION, the applicant shall submit a Statement of Completion, signed by a certified or licensed landscape design professional, verifying that all approved and required landscaping has been installed in accordance with the approved landscape plan and Chapter 23.10 of the Marin County Code, where applicable.
9. Any changes or additions to the project shall be submitted to the Community Development Agency in writing for review and approval before the contemplated modifications may be initiated. Construction involving modifications that do not substantially comply with the approval, as determined by the Community Development Agency staff, may be required to be halted until proper authorization for the modifications are obtained by the applicant.
10. The permanent restroom structure on site shall be equipped with a mechanism that automatically locks the restroom door from sunset until sunrise. The applicant shall on a daily basis (Mon-Fri) inspect the restroom to ensure that it is clean and that the locking mechanism is fully functional. If the locking mechanism is disabled, it shall be the responsibility of the applicant to ensure that the door is manually locked between sunset and sunrise until such time as the automatic lock functionality can be repaired or replaced.
11. BEFORE COMMENCMENT OF CONSTRUCTION for any of the work identified above, the applicant shall install temporary 4 foot plastic construction fencing around the dripline of existing trees greater than 2 inches DBH (diameter at breast height) that are within 20 feet of any proposed area of grading, construction, materials storage, soil stockpiling, or other construction activity. The fencing is intended to protect existing vegetation during construction and shall remain until all construction activity is complete. The applicant shall submit a copy of the temporary fencing plan and site photographs confirming installation of the fencing to the Community Development Agency. The contractor shall be responsible for maintaining the fencing and excluding construction activities from these zones. If access cannot be avoided an intact four inch layer of mulch or shredded redwood bark shall be maintained in the tree protection zone.
12. Prior to issuance of building permits, the applicant shall submit a creek protection plan for review and approval by Planning staff. The plan shall include measures that will be used to protect the creek and riparian

corridor from pollutants and runoff during the construction process. It shall be the applicant's responsibly to ensure that the creek protection measures remain in place throughout the construction process.

Marin County Department of Public Works - Land Use and Water Resources Division

13. Prior to Issuance of a Building Permit, the applicant shall:
 - a) Clearly show path of travel from site arrival points (handicap parking stalls, bus stops & sidewalks, if any) and between buildings, and indicate special components of accessible routes (striping, signage, ramps, slopes, etc.) All proposed accessibility improvements shall comply with State of California Title 24.
 - b) Provide a more detailed drainage plan. Clearly show on site plan proposed drainage paths and pipes along with their sizes.
 - c) Prior to final inspection, DPW engineer to inspect modifications for accessible parking and path of travel.
 - d) An encroachment permit shall be required for work within the road right-of-way.

Southern Marin Fire Protection District

14. BEFORE FINAL INSPECTION, the applicant shall provide confirmation from the Fire Marshal that all requirements of the Southern Marin Fire Protection District have been met.

SECTION III: VESTING OF RIGHTS

The applicant must vest this Design Review approval by securing a Building Permit for all of the approved work and substantially completing all approved work by November 28, 2007, or all rights granted in this approval shall lapse unless the applicant applies for an extension at least 30 days before the expiration date above and the Director approves it. Design Review extensions to a total of not more than four (4) years may be granted for cause pursuant to Marin County Code Section 22.56.050.

SECTION IV: APPEAL RIGHTS

NOW, THEREFORE BE IT FURTHER RESOLVED that this decision is final unless appealed to the Marin County Board of Supervisors. A Petition for Appeal and a \$700.00 filing fee must be submitted in the Community Development Agency - Planning Division, Room 308, Civic Center, San Rafael, no later than **4:00 p.m.** on **December 8, 2005.**

SECTION V: VOTE

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin, State of California, on the 28th day of November, 2005, by the following vote to wit:

AYES: BARNER, DICKENSON, GINALSKI, HOLLAND, JULIN

NOES: GREENBERG, THOMPSON

ABSENT: NONE

STEVE C, THOMPSON, CHAIR
MARIN COUNTY PLANNING COMMISSION

Attest:

Kim Shine
Recording Secretary

9A. NEGATIVE DECLARATION OF ENVIRONMENTAL IMPACT: MEASE/SALAH
9B. MASTER PLAN WAIVER REQUEST, LAND DIVISION,PRECISE DEVELOPMENT
PLAN AND DESIGN REVIEW: MEASE/SALAH

JP

Public hearing to consider the Mease/Salah Master Plan Waiver Request, Land Division, Precise Development Plan and Design Review applications proposing a two-lot land division, site improvements, designs for a single-family residence for each of the proposed lots and an agricultural/storage equipment structure on a 39.5-acre parcel in Nicasio. The project proposes to divide the 39.5-acre parcel into two agricultural/residential lots as follows: Parcel "A", a 23.7-acre parcel with a 47,000 square foot building envelope and a 2,800 square foot residence with a 625 square foot attached garage; and (2) Parcel "B", a 15.8 acre parcel with a 40,000 square foot building envelope and a 2,200 square foot single-family residence with a 530 square foot attached garage. To serve the proposed two residential parcels, the project sponsors propose to improve to County standards for residential use the 2,900-foot long existing driveway from Nicasio Valley Road. The subject property (Assessor's Parcel 121-200-01) is located at 701 Nicasio Valley Road, Nicasio.

Prior to taking action on the merits of the project, the Marin County Planning Commission will consider the adoption of a Negative Declaration of Environmental Impact for the project.

Staff summarized the staff report and recommended that the Commission review the administrative record, conduct a public hearing, and adopt a Negative Declaration Of Environmental Impact and conditionally approve the Mease/Salah Master Plan Waiver Request, Land Division, Precise Development Plan, and Design Review.

The Commission asked staff for clarification regarding the size of the building envelopes, access to the proposed vineyard area east of the residential development on proposed Parcel A, placement of the storage structure, landscaping outside of the building envelopes, alternative building locations on site, and the driveway's location in relation to a future the trail, and alternative driveway locations.

The public hearing was opened.

David Mease, applicant, briefly spoke to the Commission about his demonstrated willingness over the last three years to accommodate changes to the project requested by the County and his position on the issue of granting a trail easement. He asked that the Commission base their decision on the law safeguarding private property rights.

The following people spoke to the Commission about their concerns regarding the project and expressed their desire to maintain a trail connection from the Open Space District's French Ranch Open Space Preserve and Roy's Redwood Open Space Preserve to Samuel P. Taylor State Park and the importance of the trail for hikers and equestrians; preserving the ridgeline; the visual impact of agricultural vehicles on the ridge; how the illegal driveway impacts the stream conservation area; the survey measurements may be incorrect and the property may not meet the size restriction for a two-parcel land division; the house on Parcel A is proposed to be in the area suitable for grape growing; water use proposed for agriculture was not considered in the Initial Study and no cumulative impacts were considered; combining horses and bikes with cars is an impact and a bad idea; the impact of the project on rare or endangered species; the impact of removing trees; whether the driveway will be paved and the danger of having a trail alongside a paved road; the project needs an EIR because it will have serious adverse impacts; blocking the fire road with vehicles and tractors would be dangerous; the project should be continued to allow residents to work out their differences.

- Pamalah McNeily, Chair of the San Geronimo Valley Planning Group
- Jean Berensmeier, Lagunitas
- Paul Berensmeier, Lagunitas
- Gordon Bennett, Sierra Club
- Lisa Torme, Marin Horse Council
- Jessica Lashbrook, Marin Horse Council
- Robert Weems, President of the Marin Horse Council
- Linda Warkentin, Nicasio, Dougherty Arabians

- Jim McDermott, Kentfield
- Laura Geagan, Mill Valley, Dougherty Arabians
- Molly Rebscher, Alison Korman, Nichole: Friendly Trails Riding School
- Siri Larssen, Dougherty Arabians
- Nicholas Wilton, San Geronimo
- Sandra Sherman, Fairfax
- Chris Arisian, San Geronimo
- Frank Binney, San Geronimo Valley Horsemen's Association
- Connie Berto, Sleepy Hollow Horsemen's Association
- Linda Albion, Woodacre
- Cindy Lawson, San Geronimo Valley Horsemen's Association
- Cyndi Cady, San Geronimo Valley Horsemen's Association
- Steve Rebscher, Woodacre
- John Umphrey, Marin
- Colleen Estes for Lou and Larry Weiland, Sheriff's Search and Rescue Posse
- Robert Dougherty, Dougherty Arabians

David Mease, applicant, spoke to the fact that he has always allowed access across the fire road and is not intending to close it; there are no plans to pave the portions of the fire road as the grade is less than 12 percent; he has explained in detail in letters to the Commission the reasons for not wanting to grant an easement; the lower meadow on the east slope could be accessed with a tractor or all terrain vehicles and no road would be necessary to reach that area.

Neil Sorenson, attorney for applicant, addressed the Commission regarding the project's conformance with the Countywide Plan and also about the legal aspects of the project, and reiterated that the Commission should recognize the legal limitations when dealing with the issue of the trail.

Commissioner Greenberg asked staff for clarification regarding liability issues if the trail is in public ownership as opposed to private ownership, and possible tax benefits of granting the easement.

The public hearing was closed.

The Commission discussed the agriculture area map; the previous and currently proposed locations for the residences; improvements to the fire road; whether the graded fire road could be used as both a driveway and a multi-use public access trail, or a parallel multi-use trail could be developed; the concept of exchanging open space lands in order to acquire a trail access; and whether the County has the capability to buy an easement across the trail or the power of eminent domain.

Commissioner Holland stated that aside from the issue of the trail, he has concerns about the location of the building envelopes, but suggested that the hearing be continued because of the lateness of the hour.

Commissioner Dickenson said he has problems with the home sites as currently proposed and prefers the originally proposed locations because they are less disruptive to the hillside, are less visible, and are not on the steep hillside. Chairman Thompson and Commissioner Holland agreed that the intent of the ridge setback policy is to limit the visibility of development.

Commissioner Greenberg concurred that the original site locations of the building envelopes are better. However, she values the ridge setback policy very highly and believes there is value in sticking to the letter of the policy, unless there is an overriding public benefit. In her opinion, as proposed, the two building envelopes are too close together, and stated that she would be amenable to somewhat bigger houses because they would be less visible in the ridgetop incursion location. She noted that there would be a tax benefit to the applicant if an easement was granted, in addition to the benefit of passing off liability to the County. She cited her concerns about the safety of having both cars and other users use one driveway, and wants an assessment of alternatives.

Commissioner Barner agreed that the planner is obligated to follow the regulations, while the Commission has more flexibility. He agreed that staff should take another look at the siting of the houses, and that staff should

consider other options with fewer turnouts on the driveway. He also noted that the address numbers on the road are out of sync and now is the time to fix that.

Commissioner Julin said that the idea of trying to come to an agreement is worth pursuing from the standpoint of a trail access across the property. The land exists as it does today because of the involvement of the community. She said that the applicant has the opportunity to do something great for his community, and she would like to pursue the idea of trying to work out a compromise. She said it is difficult to visualize some aspects of the project and requested staff to provide additional maps if, and when, the project comes back to the Commission.

In response to a request for direction to staff, Commissioner Greenberg stated that she would like staff to continue talking with the applicants about any considerations or changes they would like to make; examine access to the building envelopes area without using the existing fire road, as well as the associated impacts of alternative access; the liability impacts associated with the public use of the fire road; clarify whether any portion of the illegal driveway is located in the Stream Conservation Area; the need for a road for the expansion of the agriculture use on Parcel A (she would like a new condition explicitly denying that); an evaluation of making house sizes larger and the project encroaching further into the ridgeline setbacks if there was a public benefit.

Commissioner Holland noted that if the applicant used a tractor or ATV to access the meadow, rather than putting in a road, eventually a road would be created by the vehicles traveling the path repeatedly, and that issue has to be dealt with.

Commissioner Greenberg added that agricultural uses should be permitted outside the building envelope; however, landscaping should not be allowed so those areas can remain in a natural state. Finally, she asked that language regarding success criteria for replacement tree planting be incorporated into conditions.

Commissioner Barner requested that the numbering of the proposed lot addresses be re-examined to determine if a more logical sequence could be achieved.

M/s Ginalski/Holland to continue the Mease/Salah Negative Declaration of Environmental Impact and Master Plan Waiver Request, Land Division, Precise Development Plan and Design Review to January 24, 2006. Motion carried 7/0/0.

The Planning Commission meeting adjourned at 6:15 p.m.