

**FINAL MINUTES  
REGULAR PLANNING COMMISSION MEETING  
OCTOBER 28, 2008  
CORTE MADERA TOWN HALL  
CORTE MADERA**

**COMMISSIONERS**

**PRESENT:**

Chair Bruce K. Mace  
Commissioner Patrick Pagnillo  
Commissioner Sloan Bailey  
Commissioner Peter Schwartz  
Commissioner Richard Esteb

**STAFF**

**PRESENT:**

Bob Pendoley, Planning Director  
Dan Bell, Senior Planner  
Nancy Salcedo, Minute Recorder

**1. OPENING**

**A. Call to Order**

**B. Pledge of Allegiance**

**C. Roll Call**

All the Commissioners were present.

**2. PUBLIC COMMENT:** None

**3. CONSENT CALENDAR:** None

Planning Director Pendoley requested as a change in order of the hearing items, that the New Hearing item precede the Continued Hearing item.

**5. NEW HEARINGS**

**A. 459 REDWOOD AVENUE, DESIGN REVIEW APPLICATION NO. 08-034, MIKE DEVERELL AND SUSAN MUSCATELL (OWNERS)**-To allow construction of an expanded rear yard deck. (Zoning: R-1 Medium-Density Residential District) (Planner: Dan Bell).

Senior Planner Bell presented the staff report for which he used a slide presentation. He explained that in July 2006, Design Review approval was obtained at the property for a

replacement single family home with an elevated second story rear deck extending 10 feet from the house with no external stairway access. The new owners began structural strengthening work and also began construction to increase the size of the deck without a Building Permit. Mr. and Mrs. Hughes at 461 Redwood Avenue informed the Planning Department of the expanded deck construction and a Red Tag was levied on the work. The owners are now requesting Design Review approval to increase the area of the deck and add a connecting exterior stairway along the right side to access the rear yard. The new elevated deck would be approximately 518 sq ft. The applicants are also proposing a 6' tall lattice privacy screen and deck plantings along the right side of the deck to provide privacy for the right side neighbor. He explained that staff's review of this project focused on view, sunlight and privacy issues.

He explained that staff feels that the profile of expanded deck does not block view corridors, or cast any significant shadows on 461 or 457 Redwood Avenue. There are privacy impacts on the property at 461 Redwood Avenue, and the Town has received two letters and photographs from the neighbor at 461 Redwood Avenue expressing their concern regarding the proposal. The Hughes are concerned that the proposal will reduce privacy from their rear deck and hot tub, and that the massing of proposed exterior stairway will be visible along their common side property line. The Hughes are suggesting that the deck not extend further toward the rear property line than the deck originally approved in 2006, and that the exterior stairway system be relocated on the left side of the deck. Staff feels that the deck can extend to the rear and left side property lines, but should not extend closer to the right side property line. The right side deck expansion and stairway design should either be eliminated or redesigned and repositioned to reduce visual, massing and privacy impacts on the Hughes property. An additional letter of concern was submitted at the last minute by the owner of 365 Corte Madera Avenue located downhill and 130' away.

Mike Deverell applicant of 459 Redwood, said he and his wife are the first owners of this home, and that the deck is structurally weak, but is the only outdoor living space adjacent to main level of house. He said he didn't understand a Building Permit was necessary, and apologized. He said the project's goals include creating an exit from the deck to ground level. He said he had talked to neighbors and they have no problems with him putting up screens and hedges. Neighbors behind the property like the deck as it improves their privacy and the neighbors at 457 Redwood Avenue are fine with the deck. He concluded that the proposal fits within square foot limitations of lot size.

Commissioner Bailey asked the applicant what he thinks about moving the extended deck and the stairway access to the left side of the deck. Mr. Deverell said that it would be more expensive since he wants to tie the deck supports into the retaining wall below, which he feels makes more structural sense and would be more economic.

Nigel Hughes of 461 Redwood Avenue said that the deck, as planned and half constructed, is very intrusive on his privacy and is very obvious from areas they use outside their house. He said the applicant's house is twice the height as those on either side, so the property improvements are already large. He said the privacy screen is for people on proposed deck, rather than for the Hughes, who are down below. He said because the proposal is 30 feet in the air, it would be difficult for the Hughes to build their own privacy screen.

Joann Walker of 365 Corte Madera Avenue said her house is her legacy to sons, and that the deck looks into her bedroom, living room and kitchen, and would diminish her property value. She said the proposed 6' fence would only add to the bulk of the building, emphasizing the fortress appearance. She added that the increased use would increase the noise as voices bounce off of hills.

AJ Shepard of 472 Redwood Avenue said it is not a privacy issue for him, but said that he knows the builder and architect of applicant's house, so he was surprised to hear that the deck was not substantial. When the house came up for Design Review, he thought it was good looking and better than what was there before. It was large, but warranted by lot size. At the time of Design Review, he was told the property was maxed out in square footage, so he doesn't see how more square footage can be added. He said he felt it was a precedence issue, and that more research on design would be helpful.

Commissioner Bailey asked whether there are consequences as the deck was Red Tagged. Planning Director Pendoley said that the history is not a relevant concern of the Commission, but that they should focus on findings required in the Zoning Ordinance. He said that the Planning Commission couldn't punish or fine.

Commissioner Bailey asked about Ms. Walker's concerns, and whether they would be the same if this were the originally designed deck. Considering that the original deck extends 10' out from the back, then the addition goes out another 7', Senior Planner Bell guessed the original deck would not be visible from 365 Corte Madera Ave except from perhaps looking easterly, but that the addition would.

Senior Planner Bell said that a significant portion of staff's review with the applicant was focused on ensuring that this proposal did not trigger a lot coverage variance.

Commissioner Mace said that the lot size is stated as both 7387 and 7791 square feet on plans from the applicant. Senior Planner Bell said that the property lot area is 7,791 sq. ft. and the applicant had worked backwards from the lot size and sized the deck accordingly so as not to exceed lot coverage requirements, and that there is a survey in the packet to confirm lot size.

Commissioner Bailey said there are view impacts regarding properties 360, 346, 365 Corte Madera Avenue, and asked whether there are any other properties with a privacy impact. Senior Planner Bell said staff had noticed the entire neighborhood, and that no one else had come forward.

Commissioner Esteb said he visited 337 and 353 Corte Madera Avenue, and that the owners were not present tonight, and that they had expressed no problem, and that he had witnessed no privacy issue there.

Commissioner Schwartz said he visited the site, and that, without any independent screening, there is a significant view of the 461 Redwood Avenue living area if you walk up against railing. He said the frequency of use was considered less of an issue given the privacy created by the stairwell. The screening of pittosporum is helpful, but that it was a shame that it ended abruptly. He said view and light are not an issue, but that bulk is an issue. He said Mr. Hughes's point of privacy screening *for whom* is well made, but that noise is less of an issue as it already exists. He said the deck would be better suited off the left side, but the stair location is less of an issue than the deck, except that the stairway is the screening.

Commissioner Pagnillo said he has problems with privacy and massing. He said the deck is too big, the original deck was too big, and that the stairs would be better on the right side.

Commissioner Esteb said the deck extension is a privacy issue for the neighbors at 461 Redwood Avenue. He visited there today and said it is very obtrusive. Having stairs on the left is potentially more private as screening provided by the stairs blocks the southeast window, but the deck is a privacy issue. He said he is not in favor of allowing the extension, but that he is fine with the stairs.

Commissioner Bailey said he understands the desire for safety and to access the ground, but that he has a problem with the privacy impacts on the neighbors. He said the deck extension is the only issue. He said an apparent issue is the way it looks to the neighbors, and that he shares their concerns.

Commissioner Mace said this is a new application and that the Commission must look at it with those eyes. He noted that the deck was built just two years ago by a reputable engineer, so he did not doubt its structural integrity, but he thinks it is too big. He said the southeast corner produces the most impact to the neighbor at 461 Redwood Avenue, and that a reduction in size should be centered here. He added that an increase in size is likely to result in an increase in use. He thought more beam supports should be added and the southeast corner clipped. He said the stairwell should be moved to the other side.

Commissioner Schwartz said that at the east railing, you are still looking down into the yard at 461 Redwood Avenue. He said pittosporum would help, but asked who should pay for this. He said there is little common ground to meet both needs, and that moving the stairway would be a much greater cost, but that options include a cantilever and clipping or champhoring the corner. He said there would be added mitigation with proper foliage, and that moving the deck to left would be beneficial.

Commissioner Esteb said that if the foliage were bigger, the neighbor at 461 Redwood Avenue would lose part of their bay view. The original deck size was adequate with stairs, but repeated that for him the stairs are not an issue, he has problems with the size of deck.

Commissioner Mace concluded that the Commission was ranging from not approving extending the deck at all to moving deck and champhoring the southeast corner.

Commissioner Bailey suggested that the applicant revise the plans with the neighbors concerns in mind. The applicant said he would be happy to re-address the proposal, as did Mr. Hughes.

**MOTION:** Motioned by Commissioner Schwartz, seconded by Commissioner Esteb, and passed unanimously to continue the application to a date uncertain, to allow the applicant to work with the immediate neighbors to compromise the proposal, including reducing deck size and addressing privacy concerns.

#### **4. CONTINUED HEARINGS:**

**A. DRAFT UPDATED GENERAL PLAN-** This is a continued public hearing to receive comments on the draft Final EIR and draft updated General Plan. The Commission will receive comments and may make revisions to the draft Plan. (Planner: Robert Pendoley).

Planning Director Pendoley presented the staff report, for which he used a slide presentation. He said there were 3 issues for discussion at tonight's hearing: the draft Final EIR, the draft updated General Plan chapters 2 and 4, and a short discussion on the next steps. He reviewed the Final EIR process and basic responsibilities required under CEQA. He said that the Commission would be required to make findings on every environmental impact identified in EIR, determine whether mitigation measures are adequate and whether all are identified, then make a recommendation for approval. He said the Final EIR identifies five areas of unmitigated environmental impact, which are housing, traffic, air quality, noise and water supply. CEQA requires that if there is a

mitigation measure, the Commission must either adopt it or find a reason why it cannot. He said the Final EIR finds 3 mitigating alternatives, and includes all letters received.

Commissioner Mace opened the public hearing.

Robert O'Brien, of 11 Lakeside Drive, said he went to view The Millworks housing project in Novato, which is a new development of 124 housing units, and said that seeing what 124 units looks like, he is afraid of what more will look like. He said he is concerned about the 130 units listed as a mitigating alternative at the WinCup property and another 300 units listed as a mitigating alternative at The Village. He said he was curious as to who would propose this and why. He would prefer the Commission not include this in the plan and wait for ABAG to ask for it.

Planning Director Pendoley explained that CEQA requires that the Town look at housing as a mitigation measure to the plan, and that the General Plan must allow enough space for required housing. He agreed with Mr. O'Brien that this is a policy commitment.

Ann O'Brien, of 11 Lakeside Drive, asked what might ensue if the Town told ABAG it had decided to wait on housing unit's development.

Planning Director Pendoley said the Housing Element must comply with State law, and that this is not an ABAG rule. The State determines the total number of units assigned to the Bay Area requires ABAG to distribute the units to the jurisdictions. The Town must prepare a housing element that addresses the assigned housing units and the State Department of Housing and Community Development (HCD) determines whether the Town's Housing Element is adequate and complies with the law. If they say it doesn't, and the Town adopts the Plan anyway, and there is litigation, then the Town is liable, and the judge is required to presume the Town has an illegal Housing Element. If this is found to be the case, the court may put a freeze on Building Permits and the Town may be required to pay legal fees for the other side. This happened to the Town in 1997 and the Town paid attorney's fees in 2002.

Ms. O'Brien asked when the State determines the required number of units, and how many units are under the state mandate.

Planning Director Pendoley said 244 are required.

Ms. O'Brien asked if the units had to be in one massive group.

Planning Director Pendoley said the state does not dictate how the units are provided, but they do dictate the number of units for each affordability range. Towns must prove

it provided adequate space for affordable housing, so HCD typically pushes toward higher density, but in Marin County, a second unit is, by definition, considered affordable housing, which Mill Valley argued and won. The Town would like to do this, but this approach would not yield but 244 second units.

Ms. O'Brien said she would like the Town to draft something to get second units grandfathered. She asked if The Village development would exceed the state mandate. Planning Director Pendoley said it would be difficult to grandfather a significant number of second units. Ms. O'Brien said Caltrans is discussing Highway 101 exits off Tamal Vista, and wondered how would this affect the development at the WinCup property.

Commissioner Schwartz said Caltrans works in long time periods, and that any development of this magnitude would come complete with traffic studies, and traffic capacity supporting the number of units will be ensured. Planning Director Pendoley said the traffic studies that look at development at the WinCup property say impacts could be mitigated.

Dave Coury, 301 Corte Madera Avenue, said the San Clemente development is a handsome property, and of lesser bulk than the one Mr. O'Brien visited in Novato. He said the Town of Corte Madera has a great responsibility to provide housing for its workers, and that affordable housing uses less energy and less water, and fewer automobile trips are generated. He said he feels that it is unfair to exclude housing to the people who work here. He said the space should be in the General Plan and the EIR, and thanked the Commission for its' attention to this matter.

John Roberto, land use planner representing the owners of the WinCup property, said he likes the Mixed Use-Gateway Area designation for the WinCup property. He said he would like the Town to relax the non-residential floor area ratio (FAR) limitation of up to .34, as it is at .48 now, and nonconforming. The designation allows for the continuation of WinCup and for its redevelopment, but if left as it is, the commercial allowed is too great. He said that the Final EIR found that the mitigating alternative of WinCup property development resulted in improved traffic conditions, and that this is the environmentally superior alternative.

Brooke Vos, of 14 Granada, has a continuing significant issue of Alternative 4 changing the scope of the project. She said it is confusing which is an alternative and which is the project.

Planning Director Pendoley asked the Commission for direction on the Final EIR, and specifically, whether they were satisfied with the responses, which the Commission affirmed.

Planning Director Pendoley continued with the staff report, and explained that Chapter 2 the Land Use Element, is the heart of the General Plan. He said at previous hearings the Commission identified typos and mapping issues to be corrected in the Chapter 2, and agreed to adding Mitigation Measure 4.11.4.1. He said that Alternative 2 addresses mixed-use development at The Village, which the EIR found would reduce the impact of the jobs/housing imbalance, but would not eliminate it. Alternative 3 is a mixed use development at WinCup, which would also reduce housing impacts, but not to a less than significant level, and that Alternative 4 is a combination of Alternatives 2 and 3. He said that the traffic analysis for Alternative 4 found the combination would not compound traffic impacts. He noted for the record that the traffic analysis was originally commissioned and paid for by Macerich. All of the traffic analyses were independently peer reviewed by the Town's traffic consultant.

Planning Director Pendoley said that the commercial FAR of up to .34 resulted in no change at Town Center, but left no expansion potential. He said Alternative 2 and LU-4.3 would require housing to be developed in exchange for an approved FAR above .34 at The Village. He said staff recommends that the General Plan establish a standard, perhaps for every 600 sq ft of commercial space developed, a housing unit gets built, which would give 180,000 sq ft of commercial space and 300 units at The Village.

He reviewed and explained the revisions to Alternatives 3 and 4 and asked the Commission to discuss which if any of the alternatives should be incorporated into Chapter 2 of the General Plan.

Commissioner Mace suggested Mr. Roberto's suggestions be reviewed by staff. He said the intended benefit of mixed-used development is flexibility. He asked about double counting to calculate density more beneficially. He said the idea is to set a ceiling, but increase allowed flexibility in terms of residential density. He strongly recommended against a proposal to allow an FAR .48, though that is what exists today, and it is legally nonconforming, so there is no advantage to the public of relaxing the allowable FAR. He said that recommended language would be helpful if considering alternatives 3 or 4.

Commissioner Schwartz asked about FAR .34 versus .48. Planning Director Pendoley said that this could apply to just The Village, which would get to 185,000 sq. ft. based on the notion of space. He said the FAR bump comes only if they build housing, so FAR is limited to .34 if development is retail-only.

Commissioner Schwartz asked if, on page 5 of 9, LU-4.3 "FAR shall be .6", should say "FAR shall be .48" to match land use designation. Planning Director Pendoley affirmed.

Commissioner Esteb referenced the letter from Stan Hoffman objecting to a revision that would not give Town Center the same increases as The Village. The letter states that Town Center is requesting this increase because increased FAR increases property values, but not because Town Center wants the increased density. Planning Director Pendoley said the EIR does not include the alternative of expansion of all 3 properties, but that this option could also be considered. Commissioner Mace said we are in receipt of this letter because the property owners at Town Center did not want to participate in cost of analysis, but wanted to be treated fairly and the same as those who paid for the analysis.

John Roberto said that the Mixed Use-Gateway Area designation does allow for continued use of property, and of light industrial use applicable only to this property, which is not typical commercial office. He said that, though the WinCup property is currently legally non-conforming, they are not permitted certain benefits, and that the General Plan update provides an opportunity to rectify problems that exist today.

Chuck Davis, VP of Development with Macerich, said that he wished to clarify that it was his understanding that .6 FAR was a combination of commercial cap with residential development combined, and that .6 FAR still holds in combined alternatives. He mentioned that The Village provides 40 % of the Town revenues, and that he would like to shed some light of the real estate side of retail. He said it is difficult to square up the coincidence of asset classes. Demand for residential may or may not be equal that of commercial and tying the two can create unsuccessful projects. He said Nordstrom and Macys would like to expand, and that they may elect to relocate if denied.

He said regarding LU-4.3a, that last fall Macerich held a series of 15 public meetings to determine public interest in housing development at the mall, and that they found that many Corte Madera residents are not in favor of mixed use. He said his interests cannot uphold Alternative 4 or 2 because linking housing and commercial development and allowing 600 sq ft of commercial development per one unit of housing is not beneficial, but that Macerich would prefer to consider what would be the appropriate housing at the time application.

Regarding the referenced 15 community meetings held last fall, Commissioner Esteb asked about noticing, and how the community was invited as a whole. Mr. Davis said that his co-worker had met with key community members who had been active in organizations such as Rotary for many years at their meetings to receive input, but acknowledged that no effort had been made to be inclusive of the community as a whole.

Commissioner Bailey asked what tweaking would satisfy both the needs of the Town and those of Macerich. Mr. Davis said bigger stores with parking structures would be a

happy medium with mitigation measures associated with it. He said setting .34 as base line FAR guarantees department stores are at the mercy of providing significant housing, which may not be possible. Bailey asked for suggestions for the housing requirement. Mr. Davis said he could come back with written specifics. Planning Director Pendoley said that even if Alternative 4 were put in the General Plan, we would still have a difficult time coming up with a viable Housing Element, but that the advantage to Alternative 4 is that it builds an option. He said that the Commission should absolutely get something in writing in response to Mr. Davis' comments.

Commissioner Schwartz asked if the provision of the required 244 additional housing units in Town by 2014 presumes a healthy economic climate. Planning Director Pendoley said programs in the Housing Element must be viable, and must consider economic conditions. He said that the Town can plan and zone, but if the banks won't loan, the Town cannot be held responsible on that level.

Mr. Davis said that the commitment from Macerich is not waning, but they want to incentivize at their core base, which is retail. He said that if housing needs help unlock that reality, they can consider that as an option.

Commissioner Bailey echoed Commissioner Esteb's request to see the results from Macerich's community outreach.

Commissioner Mace noted that this was a new position for Macerich, perhaps a combination of politics and the changing economy. Mr. Davis said the Final EIR alternative was new.

Planning Director Pendoley said the alternative is not a viable mitigation measure unless it has teeth in it.

Commissioner Esteb asked hypothetically if there were no housing requirement, would Macerich push for .6 FAR, which was affirmed

Commissioner Pagnillo said the Commission understands that higher housing density may not be popular at community meetings, but that it must be accepted. Mr. Davis said that setting a threshold of .34, with anything above requiring housing development hurts business.

Dave Coury said there is market rate housing and affordable housing, with a range of needs such as work force housing. The distinction between an incentive and a punishment is important. He said Nordstrom wouldn't likely leave. He disagrees with the tenor that housing is a negative, and cautioned the Commission not to give away the store.

Ms. Vos said that regarding the traffic issue, the suppositions all center around people having to come into the retail center, and never an assessment of what traffic is going out. She said more retail means more low paying jobs and that more people must live elsewhere. She admired the flexibility of infill properties, and having funds put aside for such by Macerich. She urged the Commission to create flexibility and not look at particular projects, and to put it in writing in the Plan for future members who replace those who rotate off the Commission.

Commissioner Mace concluded it had been an interesting evening with late breaking and unexpected news.

Planning Director Pendoley said the unfinished business was to respond to Audubon, which would be done by the consultants. Also, a "Findings Resolution" needs to be prepared and presented for the Commission's consideration. The resolution must acknowledge that there are some impacts that cannot be mitigated, and the resolution must explain why. He said we should certainly get intentions in writing from Macerich. He said there would be no findings resolution until the Commission decides what it wants to do about alternatives.

Commissioner Mace asked WinCup owners if economic conditions had altered plans. Mr. Helfrich said theirs is a different timeframe, and that they are happy to be involved in the Town's required alternatives, and be included in Alternative 3 or 4 and happy to help in the process. He said that a minor comment to Planning Director Pendoley's document would be to allow FAR .48 to ensure ongoing viability to the property. This is the time to true up these issues.

Commissioner Esteb asked Planning Director Pendoley if the Commission was to adopt MM 4.11.4.1, and a proposal came before the Commission that required the access to water that was unavailable, is the Commission able to find that project approval is beyond their control because of lack of water, would it be able to defend itself. Planning Director Pendoley said there would be a legally defensible basis.

Commissioner Pagnillo asked if we should work with Town Center to see what they think about economic implications. Planning Director Pendoley said we could strongly encourage them to attend the next meeting.

**MOTION:** Motioned by Commissioner Pagnillo, seconded by Commissioner Bailey and passed unanimously to continue the hearing to Nov 20, 2008.

## **6. ROUTINE AND OTHER MATTERS**

### **A. REPORTS AND ANNOUNCEMENTS**

- i. Commissioners: Commissioner Esteb attended the Council Meeting.
- ii. Director: The Town Council will hold a meeting Monday evening on Marin Clean Energy.

### **B. MINUTES**

- i. Planning Commission Minutes of October 14, 2008.  
Motioned, seconded and approved unanimously.

## **7. ADJOURNMENT**

The meeting was adjourned at 10pm. The next Planning Commission regular meeting will be held November 20, 2008.