

**FINAL MINUTES  
SPECIAL PLANNING COMMISSION MEETING  
NOVEMBER 20, 2008  
CORTE MADERA TOWN HALL  
CORTE MADERA**

**COMMISSIONERS**

**PRESENT:** Chairman Bruce Mace  
Commissioner Patrick Pagnillo  
Commissioner Sloan Bailey  
Commissioner Peter Schwartz  
Commissioner Richard Esteb

**STAFF  
PRESENT:** Bob Pendoley, Planning Director  
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

**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 explained that tonight's topics included the draft Final EIR and the response to comments; the Draft Plan revisions such as land use alternatives; and the Draft Resolutions. He explained that it is staff's recommendation to close the public hearing, and perhaps adopt a resolution at the hearing December 9, 2008.

He said there had been 13 hearings on the General Plan and EIR. He explained that the EIR identifies five areas of unmitigated environmental impact, including housing, traffic, air quality, noise and water supply. He said that housing, traffic and air quality impacts

are directly related to the shortage of housing sites, and the growth that would result from policies in the draft updated General Plan such as Land Use Policy LU-4.3, that would allow expansion at the shopping centers. He said Alternatives 2, 3 and 4 would substantially lessen the significant unmitigated environmental effects that would be caused by the shortage of housing sites, and by retail expansion at the shopping centers. CEQA requires that before adopting the General Plan, the Town must either modify the draft Plan by incorporating one or more of the alternatives, or make findings of fact to support a conclusion that the alternatives are infeasible.

He said the Town had received 3 letters from Marin Audubon, and as a result of their comments, staff recommended changes, including the correction of errors in the General Plan language on pages 3-11, 3-23, PR 3.1b-to require pervious paving materials, and on page 3-6 to refine the definition of “sustainability”. He said Audubon had offered comments that would add value to the Plan, such as the revision to page 3-24 to address the habitat value of lagoons, and to include “or other jurisdictional waters” with wetlands in RCS 8.1.b.

Chairman Mace asked for public comments; there were none.

Commissioner Bailey said that he agreed with staff regarding Audubon’s comments pertaining to both the further assessment of trails, and to wetland buffers. He asked for clarification regarding whether wetland mapping in the draft updated General Plan and EIR was not intended to identify all wetlands, which Planning Director Pendoley affirmed, adding that, because the map is based on property lines, there are many isolated wetlands on separate property that are not identified. Planning Director Pendoley said the Plan’s wetland delineation policies makes clear that the map is not intended for wetland delineation. He said that the most recent Audubon comments would receive a written response.

Commissioner Schwartz said the documents are not intended to identify all wetlands or buffers, and it would be impractical to do this here, but that a policy that states that this must be addressed prior to development is appropriate. He said the documents could be explicit that we are not trying to delineate all wetlands with the wetlands mapping section. He asked for clarification regarding Response 9 and the Town’s responsibility on wetlands features regulated by other jurisdictions such as CDFG and RWQCB. Planning Director Pendoley said Audubon’s comment is related to the Society’s preferred, wetlands definition, which is broader than the U.S. Army Corps of Engineers definition. The Plan’s language reflects what most municipalities around the Bay Area do.

Commissioner Schwartz agreed with the staff recommendation, adding that it is important to ensure that the trip wires are in place.

Commissioner Pagnillo said he is content with the documents.

Commissioner Mace said that he concurs the documents are on the right track.

Planning Director Pendoley continued with the section of the staff report pertaining to the Draft Plan and Alternative 3: Mixed-Use Gateway Area-specifically the issue of FAR. He said that the owner of this property has requested that the FAR be increased to .48, which corresponds to what exists on the property. He said that the staff recommendation is to leave it as is because the only argument in favor of the change is to make the existing development legal conforming, which seems inappropriate.

Jim Helfrich, speaking for the WinCup property said he agreed with Planning Director Pendoley, and that the WinCup property owners are happy with either Alternative 3 or Alternative 4. He said that the legal non-conforming issue is a problem with regard to insurance and refinance plans. He said he sees no impact to the Town as it is built, but the owners would like the plan FAR to match existing development for consistency.

Commissioner Esteb asked how this property is any different from any other legally non-conforming development. Mr. Helfrich said he doesn't feel like the owners are requesting a special privilege, just asking to correct the Plan to reflect the development.

Inge Morrison of 27 Lakeside Drive said that the potential amount of units at the WinCup property is outrageous, and the traffic is a big problem.

Commissioner Mace asked what staff sees as the downside. Planning Director Pendoley said there are 2, which include the precedent set by bending the Town's strict policy about changing nonconforming uses only in case of catastrophe. He said that lacking a compelling public interest, changes like this can be bad practice. He concluded that if the Town makes an exception to accommodate this change once, it will be asked again, so it is important to treat all in class the same.

Commissioner Schwartz asked for clarification if a change in zoning triggers new FAR, which Planning Director Pendoley affirmed. Commissioner Schwartz said he agreed on the consistency issue. He questioned Mr. Helfrich about the burden to lenders. Mr. Helfrich said the request would be helpful in consideration of catastrophic loss. He also said this FAR would apply only to the Gateway zone, as the property is unique. Planning Director Pendoley said that because the property is in the Light Industrial District, the FAR is .34, and agreed that the hazard of a nonconforming property is that there could be lending and insurance problems.

Commissioner Bailey asked who has authority to relieve this burden in the event of a catastrophe. Planning Director Pendoley said that the Planning Commission would have an opportunity to act upon the issue in the event of a catastrophe.

Mr. Helfrich said that, as it stands, in the event of a loss, even if all parties wanted WinCup to rebuild, they might not be able to rebuild. Given this scenario, if the FAR

were increased to .48, it would be helpful. Planning Director Pendoley said that this was a slight probability, adding that hundreds in Corte Madera have this issue. He noted that all zoning rules were suspended in the Oakland Fire situation.

Commissioner Mace asked if there was anything the Commission could do to make a difference to a lender.

Commissioner Bailey said that the WinCup property owners had been extremely helpful, but that ultimately the fairness argument trumps, to which the Commission agreed.

Planning Director Pendoley returned to the staff report section regarding the Draft Plan and Alternative 2. He said existing regulations set the FAR at .34, and that Macerich asked to have an alternative studied to allow more retail and housing. They have since said that a formula tying housing to retail expansion would be too restrictive. He pointed out that the shopping center consists of three properties, each with a .34 FAR. The Nordstrom's parcel has expansion potential for another 10,807 square feet. Macerich's is 31,112 square feet, and Macy's has none. The total expansion potential at The Village is 41,919 square feet. Nordstrom's has indicated they would like to demolish their existing 105,000 square foot building, and replace it with a 140,000 square foot store. There is adequate capacity among the three parcels to accommodate this expansion. Macerich has requested an FAR .47, which was studied in Alternative 2. Planning Director Pendoley suggested 5 options for the Commission to discuss:

**Option 1.** Leave the FAR at .34, which would accommodate a Nordstrom's expansion..

**Option 2.** Assign an FAR .47 to be implemented with rezoning at some point.

**Option 3.** Assign a .47 retail FAR, but also capacity for up to 300 units. Link retail expansion to the provision of housing. In effect, this approach would require housing. Macerich objects to this approach.

**Option 4.** Assign a .47 FAR retail and take out the housing requirement, but allow up to 300 units. This would preserve the housing option with out setting a mandate. Planning Director Pendoley noted that Macerich owns 2 mixed-use centers, and added that there is an obvious benefit in Corte Madera.

Option 5. Allow a .6 retail FAR.

Chuck Davis of Macerich, 401 Wilshire Blvd, Santa Monica, introduced Bruce Katz of Retail Focus, 2571 Diamond Street in San Francisco.

Mr. Katz said The Village is currently underserved in better merchandise, but also inadequately small to offer the destination experience that tenants want, with 436,000 square feet of retail space, where 700,000 square feet is typical. There are stores that want to be at The Village, that appeal to same customers. Alongside the right anchor, these stores would do well. Due to inadequate square footage, potential sales tax dollars are leaking, and owners cannot maximize investment. He warned that a downward spiral could happen. He argued that retail is dynamic and requires changes

in size and format, adding that we can say it works today, but that doesn't mean it will work tomorrow.

Chuck Davis said that the Town's tax income was \$5.8 million, and that Macerich constitutes over 40% of that, so they are a partner. He said the Option 4 is the comfortable option, and Macerich will look for ways to make it economically viable to meet that. He said that initially he opted for Option 5 with an FAR .6 with a maximum of 300 units, but that he objects to Option 3 because creation at market driven standards is what motivates. He explained that if they were required to provide housing, it might cost \$35,000/parking stall for the one they displace on surface with housing. Expanded retail would net 20% more in sales tax than the Town has today. He said that Macerich understands that housing is important, but it cannot be studied in such a short time, and he appealed to the Commission not to kill the golden goose.

Commissioner Bailey asked about Macerich's community outreach, which Mr. Davis had mentioned at the previous hearing. Kathy Lovold, of San Rafael and former property manager at both The Village and Northgate explained that Macerich had put together a list of community groups to meet with between June and October of 2007. She said there were 10 groups, ranging from stay-at-home moms, to new homeowners, and including over 100 residents. Macerich concluded from the experience that there is not a strong appetite for growth in Corte Madera. Many understood Nordstrom was undersized and that many go to San Francisco to shop. She said people love living here for the small town charm, and that it might take a while before people embraced this potential expansion. She concluded that the community outreach effort had been informal, yet organized with 5-20 people at a gathering.

Frank Rainwater, of Meadowsweet Drive asked about the traffic rating with a .34 FAR.

Planning Director Pendoley said most intersections operate at Level of Service (LOS) B or C, but that Paradise Drive operates at LOS D. He added that operation levels would be maintained with mitigation measures listed in the EIR. Mr. Rainwater asked what would happen to the service levels with the option of 300 units and a .47 FAR. Planning Director Pendoley explained that his answer had pertained to that option. Mr. Rainwater asked how this would be implemented. He said he is not crazy about formulas in the General Plan, and that "required" is a strong word. He asked if all were expanded to .6 FAR, which he thinks this is going too far, where would parking be located. Planning Director Pendoley said a parking structure would be needed, whose location would be resolved in design review process.

Dave Coury of 301 Corte Madera Avenue, said he is empathetic to Macerich's quandary, but added that Town Center is important to Macy's and Nordstrom. He said the question tonight is "what are mitigations to growth". He said the EIR called out traffic. The lack of affordable housing in Corte Madera is a source of traffic in itself, and the golden goose should take responsibility for those who work there. He said this is a

good EIR. The discussion ought to focus on how required policy could be written to provide flexibility. He concluded that is time to write a policy for affordable housing in the General Plan.

Marjorie Macris of the Marin Environmental Housing Collaborative said she hoped that the Town would include as strong a policy as possible to allow required affordable housing in the shopping centers, and that Alternative 3 would do that. She said Marin Environmental Housing Collaborative could help with outreach. She concluded that Mr. Davis has pointed out that these are tough times for housing, but she said that is also true for retail.

David Kunhardt of 141 Hill Path asked who owned lot 19.

Planning Director Pendoley said that it is being purchased by Nordstrom and Macerich, and that it is designated and zoned as open space. He said that it is not used for calculations of FAR.

Mr. Kunhardt asked whether it would be feasible for consideration in the Plan to set this property aside for housing, adding that it was designated for housing originally.

Planning Director Pendoley said that because the property has been open space for 20 years that was unlikely.

Mr. Kunhardt said there is little affordable children's shopping available in The Village, so he hoped to encourage expansion in line with the Town's demographics. He said the shopping center's actual jobs pay \$8-14/hour, and that employees are in-commuting. He said that integrating mixed-income housing is economically and demographically feasible, adding that the full spectrum creates a more enduring community.

Commissioner Bailey asked Mr. Kunhardt how he would connect an out of sync demographic. Mr. Kunhardt said the Town should not dictate the mix. He said that , though he likes mixed housing and retail, if FAR is lifted, physical separation is desirable.

Commissioner Bailey asked if Mr. Kunhardt were recommending an increase in FAR and whether this included housing.

Mr. Kunhardt affirmed he was in favor of both the inclusion of smart growth with the inclusion of housing, adding that it means people walk to retail jobs. He said he thinks there ought to be an affordable link, and concluded that mixed income housing does work, and is possible.

Inge Morrison asked why the Plan's language included 300 units, and why not 100 units instead. She said that the open space at lot 19 is one of the reasons that she likes living

here, so why build on it. She asked about the current vacancy at The Village, to which Mr. Davis answered there was only one.

Mr. Rainwater asked about the ABAG requirements from the State. Planning Director Pendoley explained that the Town's allocation was 179 units, which was met in part by the San Clemente development. He said that the next Housing Element dated 2009-2014 would address the need for 244 units of which 152 must be affordable. There is almost no residential development capacity in the Town, which underscores the attraction of the WinCup proposal and the FAR to support mixed-use at the malls.

To reduce the large in-commute, Mr. Rainwater said that, though the word "requirement" is harsh, it is important because of the requirement from the State, which has to be passed down the line.

Chairman Mace mentioned the 1-¼ acres of available, buildable land along the old Southern Pacific right-of-way. Planning Director Pendoley said the Town owns this, and that it has a capacity of 25 units, and appears to have a wetland, and a public trail through the middle.

Perry Newman of 111 Pixley, and a member of League of Women Voters, urged the Town to require as much housing as possible, as it is important for the future. She said it is hard for residents to accept changes, but that she hopes that this housing will be the future.

Brooke Vos of 14 Granada said she wanted to thank staff for the huge amount of time put in, and that the result was amazing. She asked if The Village were built to .47 FAR, what would be the height of the parking structure with 300 housing units built out into parking lot. Chairman Mace said this is not a design review application with specific information.

Ms. Vos said if the Plan's language allows for development of up to 300 units, and that reduction of units may not be used as a mitigation measure, then her principal concern is that the number of allowable housing units would be stuck at such a high level, that it may not be right for site. She argued against forcing inappropriate housing onto The Village property, while it may be better suited elsewhere. She agreed with Macerich in not wanting to kill the golden goose. Mandating units makes it so we have to accept a high amount of housing development.

Chairman Mace agreed with Ms. Vos that no one wants ugly parking structures.

Commissioner Esteb asked Ms. Vos for clarification about her comments on reduction of units used as a mitigation measure. Ms. Vos said that a formula might make more sense than listing a specific number of units.

Chairman Mace summarized that Ms. Vos' concerns included volumetrics, aesthetics and that development not be allowed too high. He assured her that her comments were on the record.

Mr. Rainwater asked for clarification regarding the addition of specifics to the General Plan, such as, by increasing the FAR from .34 to .47, the Town is thereby requiring that additional 300 housing units.

Planning Director Pendoley explained that the .47 FAR does not include housing. The Plan is drafted to allow a development count all acreage, for example 10,000 square feet, and apply .47 FAR to allow 4700 square feet of retail. It then gives a density range, such as 10 units per acre, thereby allowing up to 3 units in addition to the retail in this example. He said the language does not discount retail when counting residential. Also, the policies are written to provide that when the 25% density bonus (state density bonus law) is applied, the yield at The Village would be 300 units. He said that it is tried and true, tested language. He also said that it is not correct that the language in the Resources Code says you cannot reduce the number of units as a mitigation measure, if findings for the reduction can be made.

Mr. Rainwater said that it is important to separate the General Plan process and the Design Review process implemented in zoning. He said the Housing Element is specific.

Ms. Morrison asked what the FAR was for Town Center. Planning Director Pendoley said .34. Ms. Morrison said why not the same for all. Planning Director Pendoley explained that this was where things had started, but that the Town Center declined the increase, saying they had no plans for expansion, though they know they can apply for the potential to expand at any time. Everyone has the right to apply, but if the expansion potential were not in the Plan, it would be very difficult.

Mr. Davis commended Planning Director Pendoley in that with the use of incentives, the Plan is a healthy document. He said that if Macerich were maxed out on square footage, they would have to come up with parking structure.

Dave Coury said The Village is a regional shopping center, and that the Town is not going retroactive, just saying if The Village wants to grow, there are corresponding housing requirements. We need the zoning to get us there, which we discuss tonight.

Commissioner Bailey asked whether the ABAG requirement could be met by using Option 4 (.47 retail FAR, up to 300 units allowed) as opposed to Option 3 (.47 retail FAR, 300 units housing required). Planning Director Pendoley said the Housing Element requirement likely could be met by Option 4, and that the Housing Element could provides incentives for mixed-use, including housing. He said the toughest test of an adequate Housing Element is to prove that the Town's programs are feasible. He

said none of the housing options are likely feasible in a bad economy, but that the State would acknowledge that the Town does have a serious housing plan.

Commissioner Esteb asked whether this housing requirement could be property-transferable. Planning Director Pendoley said these particular options all refer to on-site developments.

Commissioner Pagnillo said he is not concerned about a retail sales leak. He said the most likely direction is to go with Option 4 (.47 retail FAR, up to 300 units allowed).

Commissioner Esteb agreed with Commissioner Pagnillo. He added that Mr. Davis' comments seemed threatening by suggesting that either the Town provide capacity potential or that The Village tenants would leave. He asked whether Macerich had other malls with residential development.

Mr. Davis said Macerich does have malls with housing units, and agreed that the company was not unfamiliar with the process. Mr. Davis said these mixed uses are located in higher density bases. He said Macerich had concluded they would never get 300 units approved in Corte Madera.

Commissioner Esteb asked what FAR would be profitable for housing. Mr. Davis said it was originally .6, but that was a different economic time, and that now FAR .47 with up to 300 units could be reasonable.

Commissioner Schwartz said that he did not feel threatened by Mr. Davis' suggestions, as he had seen in practice that typically, if the anchor tenants don't accommodate growth in their business plan, then they leave. He said it would be a shame for the Town to lose anchor tenants if they could get expansion. He said he is leaning toward the smart incentive of Option 4, with .47 retail FAR; up to 300 units allowed. He said today is one situation, but 5 years may be entirely different, so he is less fearful of not being able to mitigate. He said that the Commission will have the Housing Element, Design Guidelines and other documents to be specific, but the General Plan is a dangerous place for this because you box yourself into undesirable corners.

Commissioner Bailey said we have to vote for an option that will allow the Town Council to implement a plan to meet its' obligations. We cannot recommend a no-expansion option, whether or not this is the appropriate direction. We are missing the picture of what is best for the town. He said he votes for Option 4 for both Gateway and The Village. He said regarding Macerich's community outreach results, that there seems to be a consensus disincentive for the Town to allow any growth, and he questioned whether these are legitimate concerns shared by the majority, or by a vocal minority. He asked whether it was appropriate to consider Macerich's research. He called for a discussion of what the Town wants, asking if expansion is being considered because we are obliged to meet the legal requirement, or because it is right for the Town? He

said the Commission could encourage the Town Council to consider what is right for the Town, adding that the Town is obliged to provide affordable housing, but we are considering large development potential without a discussion of whether it is best for the Town. Though the Commission is not an elected body with the job of assessing the wishes of the residents, he said he would like to get an emotional take on the potential change to the Town.

Commissioner Schwartz said we are waiting for a project to come before us. Then we have the opportunity to assess the Town's wishes.

Planning Director Pendoley said that in the past 8 years the Town has built 208 units, including Aegis and San Clemente. He said these projects cleaned up blighted properties and provided housing for one of our fastest growing cohorts, the elderly. The impact of this has been good, and this is the scale the Town is being asked to consider for the next Housing Element.

Mr. Kunhardt said this is not a new concept. He said that successful growth could go on the regional transit spine.

Commissioner Schwartz reminded those in attendance that there were perhaps 40 people at the hearing on the Land Use Element who were angry that the Commission was considering the housing development potential listed in the EIR.

Commissioner Mace concluded that while Mr. Davis testimony was appropriately egocentric, Mr. Kunhardt, and Mr. Rainwater wanting to see affordable housing surprised him.

Planning Director Pendoley said we must make a viable and feasible plan, adding that the law recognizes the economic climate.

Commissioner Mace agreed that the Commission must react to the dictate. He said that the Town did well on the last round of housing requirements, and that we have a moral and ethical commitment to create a viable option for this round. He said the Commission should send a message of strict guidance to the Town Council that we are providing the option for housing. He said he wants a linked nexus between further development and housing. He is torn between Option 3 with housing required, and Option 4.

Planning Director Pendoley said he would craft the recommended language and follow up at the next Planning Commission hearing on December 9, 2008.

Commissioner Bailey said incentive-izing is the way to go.

Commissioner Schwartz said regarding negative vocal input, that there is less motive to attend a hearing if assenting than if dissenting. He said the Town should use the

appropriate survey mechanism to assess community emotion. Then the Commission must decide whether to act by majority.

Commissioner Bailey said he wouldn't want things to be established by default. He said the Town Council could believe the Commission assessed what was the right thing to do, where the Commission believed the Town Council would assess this, with the default result being that the right thing for the Town was never assessed.

Commissioner Schwartz acknowledged that dialog between the Commission and the Town Council is lacking. They rely upon and trust that the Commission will do the right thing.

Commissioner Esteb said because of SMART, people might not come to the malls by car. We cannot predict the future. He said he is comfortable dealing with the nexus in the Housing Element.

Planning Director Pendoley said the Commission also needed to discuss certifying the EIR. He said that the law says the Town cannot approve a project that has less damaging feasible alternatives, or feasible mitigation measures available that would substantially lessen the significant environmental effects of the project unless the mitigations aren't feasible or the mitigations have been incorporated. He said that the Commission must make findings of fact for each impact that is mitigated, and make findings for each impact that cannot be mitigated and say why it can't be mitigated. For each one of these, if mitigations are not feasible, the findings must say there are overriding economic legal, social, technical or other considerations that outweigh the unmitigated impacts. The Commission may also make findings of overriding consideration, because we want both the revenue and the housing.

He suggested that the Commission close the hearings tonight, and comment on proposed resolutions. He said he would also reprint the text of the General Plan with all comments shown, and the table of implementation programs (or the cost measurement what is near term commitment) for the next hearing.

Commissioner Schwartz asked about Caltrans comments referenced in Response 1 from Lisa Carboni regarding greenhouse and carbon footprint comments. Planning Director Pendoley said a response was called for and he will bring it back for the Commission's review.

Commissioner Mace said he has no changes at this time.

Commissioner Bailey said that in Attachment 5 of staff report Exhibit A on page 16 in the findings for the no project alternative: The Village and Gateway the text repeats no project as infeasible, which Planning Director Pendoley said is a typographical error.

Commissioners Schwartz and Bailey said they would email typographical changes to Planning Director Pendoley.

**MOTION:** Motioned by Commissioner Pagnillo, seconded by Commissioner Bailey and passed unanimously to close the public hearing.

**5. NEW HEARINGS:** None

**6. ROUTINE AND OTHER MATTERS**

**A. REPORTS AND ANNOUNCEMENTS**

- i. Commissioners: Commissioner Pagnillo attended the Town Council Meeting.
- ii. Director: None

**B. MINUTES**

Planning Commission Minutes of September 11, September 18, and October 28, 2008.

Motioned, seconded and accepted unanimously.

**7. ADJOURNMENT:** Meeting adjourned at 10:30pm. The next Regular Planning Commission will be held November 25, 2008 in the Town Council Chambers, Corte Madera Town Hall.