

**DRAFT MINUTES
REGULAR PLANNING COMMISSION MEETING
DECEMBER 8, 2009
CORTE MADERA TOWN HALL
CORTE MADERA**

COMMISSIONERS

PRESENT:

Chair Bruce Mace
Commissioner Richard Esteb
Commissioner Peter Schwartz
Commissioner Patrick Pagnillo

STAFF

PRESENT:

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

1. OPENING

A. Call to Order

B. Pledge of Allegiance

C. Roll Call

All the Commissioners were present with the exception of Commissioner Bailey.

2. PUBLIC COMMENT:

3. CONSENT CALENDAR: NONE

Chair Mace proposed a change in the order of items to begin the hearing with a presentation from Bob Brown.

6. ROUTINE AND OTHER MATTERS

A. REPORTS AND ANNOUNCEMENTS

ii. Director

Bob Brown, City of San Rafael Community Development Director introduced the BERST proposal with a presentation which reviewed the process, the importance of green building regulations, objectives, and findings from the technical advisory committee meetings.

He explained that the BERST collaborative is a group of jurisdictions that chose to participate in the process of coming up with a model green building ordinance. The focus is for new construction and remodeling, and to try and advance an energy retrofit program.

BERST was a task force consisting of an appointed or elected representative from each jurisdiction and a technical committee. Questions come from those in the industry. The technical advisory committee started with 18 members and expanded to 40. It is a composition of building officials, architects, contractors, members of Marin Builders Association and the Board of Realtors, Strategic Energy Innovations, the Marin Municipal Water District and environmental groups.

San Rafael's green house gas inventory is comprised two-thirds from transportation, which is a difficult area for local government to regulate. One-third comes from buildings, which is the focus of the ordinance. The City of San Rafael's goal is a 20% efficiency gain equivalent to taking half of current cars off the road.

There are six agencies in Marin that currently have some form of existing ordinance for mandatory green building requirements. Each approach is different, and all mandate practices for new construction. Energy savings, greenhouse gas reduction, and water conservation are the goals. There is a need for ordinance consistency between jurisdictions.

Green building techniques are well known in Marin. An engineering analysis found a range of additional cost of 1-6% for LEED certified buildings, though costs are offset by quick returns on investment in energy savings. Incorporation of LEED provisions increased the cost of the San Rafael Corporate Center construction by an additional 1%.

Marin Wellness Campus construction costs exceeded those of standard construction by about 6%. Owners of both the Corporate Center and the Northgate Mall chose to seek LEED certification, though not required by ordinance. LEED office buildings command rental rates that average 6% higher and sell for 16% more than standard buildings.

The State is moving toward a net zero energy use requirement for new commercial buildings by 2020 and residential buildings by 2030. The ordinance is an incremental step to meet the coming state requirement. GreenPoint Rated is the most commonly utilized residential green building rating system, and LEED is most common for non-residential projects.

He reviewed the ordinance strategies. As the size and cost of the building projects increase, GreenPoint, and LEED requirements also increase. Several of the recommendations propose requirements to go beyond Title 24 minimum requirements. For smaller projects, the emphasis is on increasing owner awareness of energy use, using a “whole building” systems approach. For larger residential additions and remodels a home performance audit is recommended. He said it is a prescriptive process, and left to designers and applicants. A performance-based measure is the next generation.

Initially the focus is on the fundamentals, followed by the major, more costly systems, then renewables. If efficiency work is completed first, the ultimate renewables project size can be reduced by half in most systems.

He discussed the possibilities of ABA11 financing, and noted long term energy and water savings. He noted future carbon taxes on energy, and lessening water quantities in the future.

Only voluntary green building measures are recommended for tenant improvements on minor alterations. Third-party verification is proposed to reduce implementation responsibilities for local jurisdictions. The ordinance needs to include flexibility for the Chief Building Official to waive infeasible requirements. Given the rapid evolution of

green building techniques, training and government mandates, regulations will need to be updated frequently. The Ordinance is good for about a year.

He reviewed the program recommendations. On residential new construction as the project gets larger, the number of points increases and requirements increase by compliance thresholds. A house's point score would be equivalent to the percentage by which a house would have to exceed Title 24 requirements. The multifamily construction and remodels requirements increase with project size in the same manner.

The implication is not that the ordinances have the same points and thresholds in each jurisdiction, but that they can be tailored to the community while keeping the structure of the ordinance in place.

With LEEDS verification for non-residential new construction, there are eight prerequisites in LEED system verified by LEED-accredited professionals. As the project gets larger, so do points. For remodeling of non-residential smaller projects, there are three voluntary measures, which become mandatory in the larger projects (low flow fixtures and HVAC).

He reviewed the next steps. He explained that the BERST task force is applying to the State for energy commission approvals required to mandate exceeding Title 24. The local agencies would each do individual ordinance adoption, pending California Energy Commission's adoption.

Commissioner Schwartz said a coordinated ordinance that is consistent across the County is a benefit.

Bob Brown said contractors are onboard looking toward the next direction of their industry.

Chair Mace asked if this were the ordinance San Rafael were proposing, which was confirmed

Commissioner Pagnillo said the first reason for green building practices must be economics. If the motive were economic, people would do it without the ordinance.

This is another list of regulations. People are already doing it. To make sense, it must be economically feasible. With all of the shortages of public funds, financing has to trump everything.

Mr. Brown said state requirements are the lowest common denominator and the ordinance is an attempt trying increase them. He agreed that economic benefits are recognized. We know what LEED certification generates energy savings. He said he doesn't believe most people realize the potential benefits possible. Ultimately, rebates will be combined into a home performance rebate. The Obama administration this week announced a potential stimulus package for energy efficiency.

Commissioner Pagnillo said we have to be cautious in adding development costs to the point where developers opt to build elsewhere. He said testing is a tax.

Mr. Brown said the rate of return on energy efficiency is realized within 3-5 years. The ordinance is important because energy efficiency and conservation are not currently as high on resident's list as size and comfort.

4. CONTINUED HEARINGS:

- A. 502-518 TAMALPAIS DRIVE, DESIGN REVIEW APPLICATION NO. 09-019 AND SIGN PERMIT APPLICATION NO. 09-001, TOWN OF CORTE MADERA (PROPERTY OWNER) BARBER SIGN COMPANY (DESIGNER)-**
To allow a revised Master Sign Program for the Park Madera Center. (Zoning: C-1 Local Shopping District) (Planner: Larisa Roznowski)

Associate Planner Roznowski presented the staff report for which she used a slide presentation. She explained that this is a continued application for the Master Sign Program. She referred to the site plan, and listed the signs proposed as part of the revised Master Sign Program. She reviewed the proposed internally illuminated signs: the master identification sign, individual tenant signs shown on Elevation A-1 and the Pet Club sign on Elevation B-1.

She explained that at the last hearing, the Commission had expressed concerns for lighting and asked for locations to view sample signs. She said the applicant had

provided the example of Bahia Corners in San Rafael, and the Tamalpais Bank sign at 71 Casa Buena Drive. She added that staff has added Conditions of Approval 4, 5 and 6 to the resolution requiring that a lighting dimmer switch be installed; that the applicant shall contact planning for review upon installation; and that the master identification sign shall be turned off by 9:30pm, and all others shall be turned off by 9pm.

Staff recommended that the Planning Commission approve the Design Review application and Sign Permit for the amended Master Sign Program after hearing public testimony by adopting the attached resolution with Findings and conditions.

Hearing no questions from the Commission, Chair Mace asked for public testimony.

Marlene O'Neil of 511 Tamalpais Drive said she wanted to make sure that the Pet Club sign is not bigger than it is now. She said that, though she has an agreement with the owners of Pet Club to turn off the sign at night, at least 2 nights per week, the sign stays illuminated all night.

Robert Rogers, representing Keegan and Coppin said the objective of the proposed signage was to do something to make the property outstanding. Regarding the concern about the degree of illumination, the dimmer switch is reasonable. He said that the proposed sign for Pet Club is slightly smaller, the degree of illumination is lesser, and that it is hardly discernable from across the street. The freestanding sign does not face residents, but rather passing vehicles. He added that halo illumination is not needed during daylight savings months.

Bill Hester, leasing agent for park Madera Center, said he would urge that the sign be illuminated until 10pm.

Commissioner Schwartz asked which existing tenants have hours of operation until 10pm.

The Park Madera Center property manager explained that the Thai restaurant is open later and that the coin laundry is open 24 hours per day.

Malcolm O'Neil of 511 Tamalpais, said he sees the sign at an angle direct on at the west side. He said that other example signs on Kerner Blvd. were smaller than what is proposed here, and that there are no residences in that vicinity, so the examples are irrelevant.

Commissioner Schwartz asked about improvements to the outside of the buildings to match the sign improvements. He said the key issue is night brightness, and he is fine with controls of commission review. He questioned the quality of lighting technology proposed in the master sign, and recommended lamps and ballast for efficiency and long-term operation. He said halo signs have a potential for flickering at dimming.

Commissioner Pagnillo said he agreed with the added conditions of approval, he is fine with signs in San Rafael, and that the dimmer switch provides the potential for fine-tuning if necessary.

Commissioner Esteb agreed with Commissioner Pagnillo, and likes additional Conditions of Approval.

Chair Mace said he lives in the neighborhood and shares the concerns of the O'Neil's. This is a residential area and the brightness is inappropriate. The proposed construction utilizing an outdated technology is undesirable to have in the neighborhood. He noted that there were other properties in the vicinity of the sample signs, such as the Marin Wellness that had beautiful signs.

Commissioner Schwartz agreed with Mace's comments, adding that there is new technology utilizing edge-lit, LED technology producing a cleaner light, and requiring less maintenance. He said that by definition, internally lit signs are glaring. He said the look and feel of the proposed graphics was attractive, but noted that the Pet Club sign is inconsistent with graphics of other signs. He said the yellow and white lettering was more attractive.

Commissioner Esteb asked who would be paying for the signs.

Senior Planner Bell said the owner, the Town of Corte Madera, is paying for signs.

Commissioner Esteb asked if the Town was willing to pay for cutting-edge technology.

Commissioner Schwartz said with Town paying the utility bill, the technology should be efficient.

Chair Mace said he was not fond of the design, but that it was not a showstopper. His concern was the proposed 56 sq. ft. of internally-lit plastic on the Master Identification Sign.

Planning Director Pendoley said the proposed design is part of overall property management care of the property, and that the Town was advised that, dollar for dollar, the center would receive the most aesthetic boost from new signage.

Commissioner Pagnillo said it is an improvement over what is there now, and that he understood why property managers want to fix that problem. He said he went by samples today and said one was bright, but that the dimmer switch would solve that. In summertime, the sign would only be illuminated from 8:30-9:30.

Chair Mace asked if on the large sign, the letters could be reversed.

The applicant said that anything is possible, but that he was surprised at the suggestion of change. He said the technology of the master sign is ideal with tenants changing periodically. He said that LED systems are used in smaller building signs, but that LED illumination in this type of master sign doesn't work. If the panel were darkened, the result would not be inviting to the public. He pulled out an example of the white substituted with an ivory color with teal. He said that if the project is denied or continued tonight it would be a major setback as it has already been reviewed by Town staff.

Chair Mace explained the review process to the applicant, noting that the Commission was now reviewing the design application, and that no other staff review inferred an approval.

Commissioner Esteb said he preferred the ivory, and added that some of the area brightness on the sample properties may have been coming from the buildings beyond.

Commissioner Schwartz asked if the ivory provided enough contrast for legibility, which the applicant confirmed.

MOTION: Moved by Commissioner Pagnillo, seconded by Commissioner Esteb to approve Design Review Application No. 09-019 and Sign Permit Application No. 09-001, with alternate colors of ivory and teal at 502-518 Tamalpais Drive.

Ayes: Commissioners Esteb, Schwartz, and Pagnillo

Noes: Chair Mace

Abstain:

Absent: Commissioner Bailey

Planning Director Pendoley read the appeal rights.

B. 300-700 ROBIN DRIVE, 100-200 UPLAND CIRCLE; CONDITIONAL USE PERMIT APPLICATION NO 09-006, TENTATIVE MAP No. 09-001 (condominium conversion), and ZONING ORDINANCE AMENDMENT (affordable housing in-lieu fees); STELLAR CORTE MADERA, L.L.C. (PROPERTY OWNERS)-To convert the Madera Vista Apartment Complex to condominium ownership. (Zoning: R-2 Low-Density Multiple Dwelling District) (Planner: Dan Bell)

Senior Planner Bell presented the staff report for which he used a slide presentation. He explained that this is a continued public hearing for the condominium conversion of the Madera Vista Apartment Complex. The Commission has held two public hearings on the proposed project. Conditional Use Permit approval is required for residential condominium conversion. One of the fundamental CUP findings is that the project complies with the General Plan and each of the applicable provisions of the Zoning Ordinance. The Commission voted to approve the General Plan Amendment and the portion of the Zoning Ordinance Amendment dealing with the R-3 zoning district and the Parking Variance. The property is no longer non-conforming. The Planning Commission's recommendations will be presented to the Town Council December 15, unless appealed, which it was not.

The building deficiency report was reviewed item by item at the last hearing. In order to approve a condominium conversion, the Commission must make a Finding that deficiencies are appropriate and buildings are constructed in a manner suitable for ownership.

Condominium conversions are only allowed if it is shown that rental vacancy rates are greater than 5% in Lower Ross Valley. A Rental Vacancy Report was supplied by the applicant as prepared by the Concord Group showing that this threshold was met, and there has been discussion about adequacy of report. Staff looked into peer review, and the recommendation of Mr. Burke, who said he had reviewed the report and in his opinion and methodology was significantly accurate and defensible. His resource is RealFacts. He had questions about the report, such as whether the June 2009 vacancy rate was determined for the month, or as a snap shot in time. Usually vacancy rates from RealFacts are reported on a quarterly basis.

The Zoning Ordinance requires of a new condominium project that 25% of units would be available to low income families. The applicant is requesting this section of ordinance be amended to add an alternative in-lieu fee.

The existing ordinance affects new construction projects. The applicant is suggesting to borrow this language and apply it to this project. The ordinance goes on to say that if the project would consists of 10 or more units, an in-lieu fee would not be allowed as substitute. He reviewed the in-lieu payment formula from the existing ordinance, and the resulting payment into the affordable housing fund. Staff has reviewed the in-lieu fee structure utilized in other jurisdictions, and found in-lieu payments are allowed only as fractional payments, where a formula may require the construction of 20% of total units proposed or 2.4 units affordable. In this case, the developer would be required to build 2 units affordable and pay an in-lieu fee for the remaining 0.4 percent. The in-lieu fee is not permitted as an alternative to unit construction in any of the jurisdictions in the vicinity. Marin County utilizes a very similar system with 20% of units set aside, and

in-lieu fee is for fractional requirement. Larkspur is also similar in requiring affordable units for 15% of projects with a fractional in-lieu fee payment.

Chair Mace asked for a presentation from the applicant.

Seth Mallen followed up on Dan's comments of last meeting. He said the applicant is proposing the condominium conversion to improve life safety, but that it has become financially infeasible to continue. He listed benefits to the Town of affordable fees and improved appearance of property. Madera Vista is not now subject to affordable housing requirements. Condominium conversion allows a lower price point for perspective residents. He reviewed required percentages of required affordable housing units in condominium conversions in surrounding jurisdictions, and added that in-lieu fees may be approved by a Town Council vote surrounding jurisdictions. He said larger cities allow for in-lieu fees, and that it becomes a good policy and provides more options. He said the San Clemente project would not have happened without in-lieu fees. He reiterated that the applicant is asking to pay the in-lieu fee set forth in the Town's ordinance in 2003.

Chair Mace clarified that the ordinance pertains to for new construction.

Mr. Mallen defended the Concord Group's updated report showing an 8% vacancy rate. He said this is something he sees as a national trend within their own portfolio in other states. Regarding methodology, he said RealFacts relies on self-reporting, while the Concord Group has a 3-pronged approach, including self-reporting, and examines rent rolls for properties in area. Regarding building code conformance, he said most homes in Corte Madera do not meet code, which changes constantly. By approving the conversion the buildings are getting closer to conformance. He said the applicant could commit to comply to requirements in Chapter 7 of code for new construction, improve fire rating, fix sound transmission issues to meet requirements for new construction, fix structural soft story conditions, and that the conversion would allow for getting the remaining buildings to 80% structural conformance of Building 7. Accessibility is hindered by the topography of the site, which prevents alterations without significant

reconstruction. Bathrooms are also too small for compliance. It would be impractical to require ADA compliance as it would be cost prohibitive, but the applicant is proposing to upgrade controls to be accessible.

Hearing no more public comment, Chair Mace brought the discussion back to the Commission level.

Senior Planner Bell said he had received two letters of support of single-family homeowners within 100 feet of property.

Commissioner Schwartz asked whether tonight's package included discussion of Parking Variance.

Senior Planner Bell referred the memo dated December 3 outlining the Commission approvals of the previous hearing.

Chair Mace said regarding the building code deficiency report that the Commission is being asked to dismiss code requirements in order for the condominium conversion to move forward.

Commissioner Esteb said he could not accept less than what the code requires for a condominium conversion.

Commissioner Pagnillo said it is not in the long-term best interest of town to approve a condominium conversion, so it is hard for him to look at this report and determine acceptability.

Commissioner Schwartz said having lived at the apartment complex, he is aware of its' deficiencies, and of the challenge of trying to make improvements. He said that while he would like to be able to support site improvements and allow a condominium conversion to make it work, if the building code deficiencies remain, he is not sure he would be able to accept the burden should they cause harm in the future. He said he has a concern with structural engineer report that the project is 80% compliant.

Planning Director Pendoley said deficiencies don't count as deficiencies under code if they renovate the apartments per the design review approval approved last year. The law gives infinite discretion.

Commissioner Schwartz agreed there is infinite discretion, except in the area of personal ethics. The building code is a minimum. Fire and life safety issues are critical. He also questions energy code deficiencies, and whether new units were sharing common exhaust flumes.

Commissioner Esteb said they were not planning a condominium conversion when they improved Building 7, yet they did a wonderful job, and that he assumes they will continue because it is in their best interest.

Chair Mace said any application before the Commission is not asked to deal with the building code because it doesn't have the authority. Therefore he cannot make exceptions to code, which he feels is a minimum effort.

Planning Director Pendoley said he heard for the first time this evening a change in the applicant's presentation to 100% compliance with fire code.

Commissioner Schwartz asked which deficiencies in the three deficiency reports the Commission was being asked to waive.

Senior Planner Bell said Building 7 represents the anticipated upgrade of buildings 1-6, but management is proposing to make improvements beyond Building 7.

Commissioner Schwartz asked for a checklist of which items the applicant would improve, and of this long list, what would remain a deficiency.

Chair Mace asked to review a document listing what would be done.

Commissioner Pagnillo said as apartments, the Commission would not deal with deficiencies.

Chair Mace moved to a discussion of the vacancy rate.

Commissioner Pagnillo said vacancy rates are just up from 5%, but not in best interest of Town to take 126 units of rental property off the market, because he didn't feel they would ever be replaced.

Commissioner Schwartz asked over what time frame the vacancy rate was measured.

Senior Planner Bell said ordinance does not specify.

The applicant said the report was based on information representing a snap shot in time.

Chair Mace said the ordinance's verbiage says "all" vacant land and that the report covers only of 6 complexes, and agreed the "all" is not possible.

Commissioner Schwartz suggested to staff to add a timeframe to the ordinance.

Chair Mace said he read ordinance as requiring that the vacancy rate be determined by information from a snapshot in time. He said the vacancy rate as determined in the Burke report says 3.6%, using RealFacts data, which is a snapshot. This vacancy rate does not meet the threshold. He added that a quarterly measurement period would be better.

Planning Director Pendoley said the Concord Group report appears to be more comprehensive than Burke's as it provides a trend line, and suggested the Commission could ask for trends information if needed to get to a comfort zone.

Commissioner Schwartz said rental property is valuable for the town, but if the applicant can't maintain rentals and get value as an apartment complex, condominium conversion is a consideration. If the apartments are converted to condominiums, it is important to understand how that would affect someone trying to rent.

Commissioner Esteb said he has a personal friend in the rental business, and that for him, vacancy rates are 3%, down to none in Corte Madera. Historically 5% is rare, as it is usually less. He said he didn't believe the vacancy report.

Chair Mace said the Bay Area Cost of Living Index required by ordinance has not been provided.

Senior Planner Bell said it doesn't exist.

Chair Mace said taking apartments out of circulation in town causes him concerns about what that does to the user. When he looks at concerns in aggregate, he cannot justify the condominium conversion.

Commissioner Schwartz said he is trying to keep an open mind. He said he reviewed the minutes and found that the Commission had reviewed all of the questions he would have asked. The challenge with those units is to get the highest and best use of the site, balanced with need to evaluate the importance of rental units. He said the applicant has said they would improve the building structures more with the condominium conversion, but that he hated to see the apartments gone.

Commissioner Pagnillo said these people own a lot of property and can finance improvements in another way. The Commission is not being asked to worry about their financing, with the threat that they will not improve their property without the condominium conversion.

Commissioner Schwartz said they could spend the money to fix the building, but would not be able to make them available at an affordable price.

Chair Mace said what the owner put into the building has no bearing on rent. He asked about Town Council approval of in-lieu fees in other communities by approval.

Senior planner Bell said this could be done in the CUP approval.

Chair Mace asked how commissioners felt about this component.

Commissioner Esteb said he is not interested in making any changes in the ordinance.

Commissioner Pagnillo said we would have to come up with different (higher) fee.

Commissioner Schwartz suggested that if the proposal were to borrow new construction language for in-lieu fees, it should then also borrow building code requirements. He said the in-lieu fee doesn't match cost of construction, rather it undervalues.

Chair Mace asked Commissioner Schwartz if the fee should be higher, which he confirmed. Chair Mace said the ordinance should be revised to increase the in-lieu fee, but not tonight in relation to this proposal

Chair Mace asked for a straw vote.

Commissioners Pagnillo and Esteb voted to deny, while Commissioner Schwartz was neutral.

Chair Mace with the removal of rental apartments, with the deficiencies and the vacancy rate at less than 5%, he couldn't approve the CUP to allow condominium conversion per the Zoning Ordinance.

Commissioner Schwartz said regarding the deficiency list that there were not many things he could accept.

Planning Director Pendoley said it is important to understand the deficiency report.

Mr. Mallen clarified that the applicant planned to meet new construction code for Chapter 7 issues and sound transmission. Structural issues at 80% is the best we can do. He said the project would be meeting Title 24 requirements, Plumbing Code, and ducting in terms of fire damper. He said the electrical switchgear complies, and the grounding system works, but is not to code. He said the ADA issue is too difficult. He explained that he did not mean to make a threat not to improve the complex without the condominium conversion, but rather to say that it is financially infeasible to do so as an economic reality resulting from economic conditions. He added that each of the company's properties is owned by different group of investors, and cannot be used as leverage.

Senior Planner Bell said condominium conversion findings are listed on page 349; building deficiency report findings are found in sub section iii; vacancy rate findings are

listed in subsection gi; and affordable language is found in subsection ii. For approval, the Commission must make Findings for subsections iii and gi, and a recommendation to Town Council to change the ordinance.

MOTION: Moved by Commissioner Esteb, seconded by Commissioner Pagnillo, to deny Conditional Use Permit Application No. 09-006, Tentative Map 09-001 (condominium conversion), and Zoning Ordinance Amendment (affordable housing in-lieu fees) at 300-700 Robin Drive; 100-200 Upland Circle.

Commissioner Schwartz asked if commission denied the CUP application, could the applicant apply again at another time.

Planning Director Pendoley said the Commission has the option to deny the project without prejudice, so the applicant can come back any time, but that the motion stands.

Ayes: Commissioners Esteb, Mace, and Pagnillo
Noes: Commissioner Schwartz
Abstain:
Absent: Commissioner Bailey

Planning Director Pendoley read the appeal rights.

5. NEW HEARINGS:

A. NONE

6. ROUTINE AND OTHER MATTERS

A. REPORTS AND ANNOUNCEMENTS

i. Commissioners: Commissioner Pagnillo went to the Town Council meeting.

ii. Director: Citizen's advisory committee for Housing Element meets tomorrow night.

B. MINUTES: Planning Commission Meeting Minutes of November 24, 2009. Motioned, seconded and approved.

7. ADJOURNMENT: The meeting was adjourned at 10:25 pm in honor of the outstanding career of Planning Director Bob Pendoley. The next Planning Commission Regular Meeting is to be January 12, 2009 at 7:30 p.m. in the Corte Madera Council Chambers, 300 Tamalpais Drive.