

PLANNING COMMISSION
MINUTES NO. 1067
Regular Meeting
September 14, 2016
Town of Tiburon Council Chambers
1505 Tiburon Boulevard, Tiburon, California

CALL TO ORDER AND ROLL CALL:

Chair Williams called the meeting to order at 7:30 p.m.

Present: Chair Williams, Vice Chair Corcoran, Commissioner Welner

Absent: Commissioners Kulik and Weller

Staff Present: Director of Community Development Anderson

ORAL COMMUNICATIONS:

There were none.

COMMISSION AND STAFF BRIEFING

Director of Community Development Anderson gave the following briefing:

- There are no items currently scheduled for the next meeting on September 28th and that meeting will likely be canceled.
- The Town is switching to a Granicus contract for the recording of meetings and there will be changes made to the microphones and recording system. In the near future, people will be able to go on-line and choose the particular agenda item they want to listen to rather than hearing the entire meeting. However, there is no video component proposed at this time.
- Audio visual upgrades are being made to the Council Chambers. A new screen has been installed and a new overhead projector system will be installed for showing PowerPoint presentations.

PUBLIC HEARINGS

1. 35, 37 and 39 Lyford Drive (PD#35): Consider approval of a Tentative Subdivision Map application for the creation of three lots on a 1.7-acre parcel currently developed with three single family detached residences; File #TM2016-001; Richardson Bay Land Company, Owner/Applicant; Assessor's Parcel No. 058-301-49 [DW]

Director of Community Development Anderson gave the staff report, stating that the Commission may recall this project from last year when it approved a Conditional Use Permit (CUP) to convert the three detached single family dwellings on this site to condominium

ownership, and also recommended to the Town Council an amendment to the precise plan from 1974 for the same purpose.

The Council subsequently approved that precise plan amendment and the next permit before the Commission is the tentative map application. No physical changes are proposed as part of the Tentative Map. The main thrust of the tentative map review is to ensure the subdivision complies with the State Subdivision Map Act and with local subdivision ordinances.

The general plan and zoning ordinance consistency for this project have already been determined through the use permit and precise plan processes. The subdivision ordinance for the Town requires several findings to be made before approval; these findings are detailed in the written staff report and staff believes all findings can be made for approval.

Regarding public comment, he stated that has received no comments or correspondence. The project is categorically exempt from CEQA and staff concludes that all findings can be made for conditional approval of the tentative map. Director Anderson recommended that following the public hearing, the Commission should move to adopt the resolution approving the tentative map.

Andrew Allen, applicant, Richardson Bay Land Company, waived his presentation and stated the staff report is complete and accurate.

Chair Williams opened the public hearing. There were no speakers and she closed the public hearing.

Commissioner Welner stated this is an application that makes the Commission's job easy and he supported staff's recommendation.

Vice Chair Corcoran echoed his comments, stating the Commission reviewed the zoning-related applications last year and he could make all findings for this trailing approval.

Chair Williams concurred, stating she reviewed the staff report and the specific findings required to be made.

<p>ACTION: M/S (Williams/Corcoran) to adopt the resolution granting conditional approval of the tentative map application. Motion carried 3-0.</p>

2. Ling (Stony Hill) Residential Project (PD#24): Request for extension of time on an approved Tentative Subdivision Map application for the creation of three single family residential lots on 5.6 acres of land located at the end of Stony Hill Road; File #TM2016-002; Assessor's Parcel No. 055-261-10 [SA]

Director of Community Development Anderson gave the staff report, stating in September of 2009 the Planning Commission approved a vesting tentative subdivision map for the Ling (Stony Hill) Residential Project, which proposed three single family lots on 5.6 acres of land at the end of Stony Hill Road.

In March, 2008, the Town Council had approved a precise development plan application for the property and that plan approved the project density, size, location, and height of homes and resolved all of the substantive issues associated with development of this property.

The project review process was very lengthy, as the original application was filed in 2003 and by the time the three-lot project was approved, it had been reduced by two lots and went through a full EIR and subsequent addendum to the EIR to address changes made when the project was reduced from five to three lots.

The Town's 2009 vesting tentative map approval was valid for three years, but the California State Legislature automatically extended the life of all tentative maps during the economic recession, such that the life of this map was extended until September 9, 2016. Under state law, when applicants file for a timely extension of a tentative map, the timeline is automatically extended for either 60 days or until the date upon which the request is acted upon, whichever occurs first. Therefore, the deadline for map expiration is currently November 9, 2016.

The request before the Commission is a time extension of the approved vesting tentative map for one year. The applicants can apply for three years, but they clearly feel they do not need it and staff agrees. Neither the Tiburon Subdivision Ordinance nor the State Subdivision Map Act provides much guidance for acting on tentative map time extensions. They are generally somewhat automatic and somewhat routine. According to the Town Attorney, when acting on tentative map time extensions, the Town is not lawfully allowed to impose new conditions upon the map or to modify pre-existing conditions on the map approval.

Generally speaking, tentative maps are extended unless there has been some substantive change in the area around the project or unless the approval is so inconsistent with the current General Plan that it would be out of character to approve it. Because this is a vesting tentative map, Anderson was not certain that these criteria would even be applicable. In any event, neither the General Plan has changed much nor have circumstances in the immediate vicinity of the project changed substantively since the original map approval.

Furthermore, the applicants have been pursuing the next and final stage in the subdivision process for this project, which is a parcel map. They filed a parcel map application in 2015 and it has gone through extensive review. The main reason for that is the drainage issue, as the EIR for this project had required that the project ensure that stormwater flows for both the 2 year storm and the 100 year storm not be increased at the conclusion of the project over their volumes when the land was undeveloped. The Town Engineer indicated that was a primary reason why this parcel map application has taken so long to process. The Town is being very cautious and wants to ensure the drainage is done correctly.

There are no changes proposed to the approved map and staff does not anticipate any changes to the project that would require either an amendment to the precise plan or to the tentative map before the parcel map is recorded.

In terms of public comments, staff received several letters and a petition after the staff report was completed, copies of which were forwarded to the Commission. They mainly focus on urging the

Commission not to approve the extension, or requesting that the Commission modify certain conditions of approval on the project.

While staff understands the frustration of the neighbors in how long it has taken this project to break ground, at this time the discretionary approvals are behind this project until such time they apply for the individual home designs on the lots. Those applications will be reviewed by the Design Review Board.

As mentioned, an EIR was certified for this project and there are no changes that would trigger additional review. Director Anderson recommended that the Planning Commission take any public testimony on this item and move to adopt the draft resolution, which would grant the one-year time extension for this vesting tentative map approval.

Commissioner Welner asked about EIR certification. He understands that the EIR was certified years ago and nothing has changed in terms of the substance of the project, but he questioned the elements of that report having to do with cumulative impacts or changes to the community and whether it needs to be refreshed or not.

Director Anderson responded that staff has reviewed the EIR while processing the parcel map, but noted that once an EIR has been certified and the project is not changing, the courts have granted a great deal of repose to such certified documents, and they do not like to open things up that have already been reviewed and decided in the absence of substantial changes in projects or circumstances.

Chair Williams said as she read the submissions and noted that several people indicated that this was a request for a three-year extension. She received confirmation that the request is for a one-year extension. She asked if the parcel map completion was anticipated by staff to take less than one year and Director Anderson replied in the affirmative.

Chair Williams asked if the application itself was untimely or not, and Director Anderson stated the application was received in a timely manner.

Chair Williams opened the public hearing and called upon the applicant to make a presentation.

Scott Hochstrasser, IPA, Inc. stated he has been working on the project since 2007 and wished they were done with the process. He referred to a letter in the packet and asked to make one correction to it. On the first page under the first item, the address is wrong and should be revised to read "1 Owlswood Road" and not "6 Owlswood Road" that benefitted from the project by receiving 1300 square feet of the subject property. He said he would not go through all of the details because they are in the record but was curious as to why neighbors would oppose an extension of this map, as they are so close to having it completed. He said if this is denied and it goes to the Town Council [on appeal], the property is not going away and there is demand to develop the property. More importantly, the owner indicated today that he would be willing to sell the property if the neighbors wanted to buy it for open space. However, he hopes the Commission will grant the extension and move forward.

Regarding Chair Williams' questions, he stated the five facts contained in his letter: 1) that the extension was filed before it expired; 2) that some of the processing delays are the result of neighbors' demands for parts of the project and the clients responded in good faith; 3) there was coordination required with referral agencies and it took two years to get a Caltrans encroachment permit for work they must do on the state highway; 4) the application has been delayed because of changing development standards, especially regarding drainage; and 5) the processing has been slow by the Town. They have had four reviews of the application and now with the change in drainage standards they are back in the process again.

Mr. Hochstrasser stated they hope they can complete the project in much less than one year because they are very close and he asked for approval of the extension.

Chair Williams opened the public comment period.

Roy Little stated he and his wife occupy 1 Owlswood Road and have been working on the project since 2003, which is when they first saw the wood and the orange trailers. The reason for their prompt and hard-driving response is time. In 2009 they expected to hear bulldozers at some point within the next 3 years. There was then an additional 4 year extension of time granted and frankly they are confused how it could take a year longer to actually go ahead and begin moving dirt, constructing homes, and be complete. In some sense, his response was rooted in the notice he received from the Town which was for a 3 year extension, so he feels two-thirds better and further, he said there was not enough room on the notice to spell out the time sequence of getting the approval. When they read the notice they read it expired on September 9th and the hearing is on September 14th. Therefore, personally he feels better that progress is being made. He feels better that the parcel map completion would take less than one year, but asked "less than one year" until what and asked when they would hear bulldozers?

Betsy Little said they are frustrated because they have not seen the bulldozers coming through. They sung praises at the end of 6 years by the prior Planning Commissions, by the ARC, by Scott Hochstrasser and they have a thank-you note for him for his cooperation and collaboration. They want to paint their house but it does not make sense when 75,000 cubic yards of dirt will be moved and will get it dirty, even though there is a \$25,000 fund for power washing windows so forth. She would feel better if they could paint their house.

Mrs. Little said they received a letter from Mr. Hochstrasser stating he was disappointed he received their letter. She cited the delays voiced, and most concerning is that the Town Engineer was potentially looking at legal action by the City of Belvedere because of downstream flooding being caused by existing upstream development and potentially being exacerbated by the Ling project because of significant re-design of the entire drainage plan. She asked if this plan is in place or she asked if there will be litigation. Mr. Hochstrasser stated he does not anticipate the process taking another 3 years and possibly only 6-12 months at most. She urged that the project move along and questioned when bulldozers will come in.

In rebuttal, Mr. Hochstrasser said in his line of work, people never want to hear bulldozers, but he completely appreciates what the Littles are asking. They have had a good relationship over the years, but he cannot predict when the project will be built. He has tried and failed to predict a

time frame by the owners, and the market in 2008/09 was terrible at the time of tentative map approval. The client lives in China most of the time, and once the final map is recorded there is no law or requirement to run bulldozers or to build the project right away. They will have to bond for improvements, but apologized and said he just does not know the answer to when the bulldozers will arrive.

There being no one else wishing to speak, the public hearing was closed.

Vice Chair Corcoran stated he was sympathetic to the neighbors and agreed it would be extremely frustrating to wait 8 years just to paint a house expecting that the project would get done. The recession caused many inconveniences for many people, but based on the general guidelines and time extensions for tentative maps, they are generally granted unless the project is not consistent with the General Plan or if circumstances around the project area have changed dramatically, neither of which has happened. He therefore thinks the only logical conclusion for the Commission is to grant the one-year time extension, and it also seems that the applicants are motivated to wrap it up as soon as possible.

Commissioner Welner had a comment about the letters that arrived just before the meeting. Normally, the Town receives complaints about what is going to be built. However, the letters in this case are complaining about how long it has taken and he is sympathetic to that. To not approve the extension, however, would achieve the opposite of the goal, which is to get the project done.

He said he would therefore vote in favor of the extension in the interest of moving forward. He said the land could sit there for years and nothing could happen, and he suggested the Littles simply paint their house and not wait. The bulldozers will take time even if the processing moves forward quickly, and he supported adoption of the resolution to extend. He admonished the letter writers that even if the project is approved it might still take years for the project to be built.

Chair Williams agreed that the extension request is a reasonable one and granting it makes for a more efficient and streamlined process. She said the Commission does not have a lot of guidelines in these matters and looks only as to whether or not the General Plan or the project has changed and whether or not there has been a good faith effort to move the project forward.

The Planning Commission has seen requests like this in the past, and it would be unprecedented to not grant an extension request. But, she thinks there is a real value to good communication and she thinks this is an important process to hear people's feelings about the planning process in general. What people enjoy, appreciate and have respect for is how important it is for the applicant and developer to communicate with people in the community about what is going on, because not knowing sometimes is what creates all of the problems. She therefore implored better communication going forward and believes they will work through it all. She supported extension of the map and suggested a motion.

<p>ACTION: M/S (Corcoran/Welner) to adopt the resolution granting a one-year time extension for the vesting tentative map, with a new expiration date of September 14, 2017. Motion carried 3-0.</p>

ACTION ITEMS

1. Adjacent to 4695 Paradise Drive: Confirmation of Precise Development Plan Waiver for the Pourian property (PD#5) in association with a proposed lot line adjustment to rectify existing property encroachments; Reza and Rae Pourian and Kristin Pourian Pressman, owners; Patricia Maier and Dom Martin, Applicants; Assessor Parcel No. 038-111-05 [DW]

Director of Community Development Anderson gave the staff report, stating the matter is a confirmation of a waiver of a precise development plan requirement that has already been approved. A portion of the existing single family residence at 4685 Paradise Drive was unfortunately constructed over the property line many years ago, encroaching onto property that is owned presently by the Pourian/Pressman family. The latter property is designated as PD#5 in the Town's zoning maps.

The owners of both properties have agreed to a lot line adjustment that will change the property line so that the residential improvements are no longer encroaching onto the Pourian property. Since that would affect the Pourian property (however lightly), in terms of various aspects of the size and frontage, a waiver of the precise development plan requirement was requested and was approved by the Director last month. The zoning ordinance also requires that the Planning Commission confirm that waiver at a public meeting.

Director Anderson stated he granted the waiver on the basis that the residential improvements encroach only a small distance, or about 28 feet, onto the Pourian property and the actual lot line adjustment that would correct the encroachment problem would constitute less than one-tenth of one percent of the Pourian property moving over to the property at 4695 Paradise Drive. Thus, in terms of total land area, it is a very tiny portion of the Pourian property that is affected. Also, there is no environmental sensitivity associated with the area where the residential improvements have already been constructed, and the improvements were constructed many years ago by a prior owner so there is obviously no prior intent to avoid a precise development plan requirement in this case.

As of this date, staff has received no comments or concerns from any member of the public. This project is categorically exempt from CEQA. Director Anderson recommended that the Commission take public testimony and move to adopt the resolution confirming the waiver of precise development plan requirements.

Chair Williams opened the public comment period.

Patricia Maier, applicant, stated the area in question is already a court-adjudicated easement with reference to the south end of their home and some area around it for defensible space, as well as a stairway and other miscellaneous garden improvements. Converting this to fee simple ownership makes it "cleaner" for both parties, and while she knows Mr. Pourian has been exploring possible options for development of his property, she was not aware of any actual plans being drawn. Also, it could be years before a precise development plan would even be

available, which would defeat their present legal agreement that requires they move forward within a few months to obtain the lot line adjustment.

Chair Williams stated she has reviewed the required findings and feels comfortable making them.

Vice Chair Corcoran concurred and thinks this is a rather minor encroachment and not a huge impact on surrounding areas, and it does not appear as if there was a deliberative attempt to circumvent the precise development plan requirements. He therefore voiced his support for approval.

Commissioner Welner stated he supported approval as well.

ACTION: M/S (Welner/Williams) to adopt the resolution confirming the waiver of precise development plan requirements granted by the Director of Community Development for the Pourian property. Motion carried: 3-0.

2. Planning Commission Minutes –Meeting of July 27, 2016

Chair Williams requested the following edit:

- Page 4, 3rd paragraph: change the word “wais” to “was” in the last sentence.

Commissioner Welner stated he was not present at the last meeting and confirmed with Director Anderson that Commissioners have the option to abstain or simply vote on the matter.

ACTION: M/S (Williams/Welner) to approve the meeting minutes of July 27, 2016, as amended. Motion carried: 3-0.

ADJOURNMENT

The Planning Commission adjourned the meeting at 8:10 p.m.

ERICA WILLIAMS, CHAIR
Tiburon Planning Commission

ATTEST:

SCOTT ANDERSON, SECRETARY