

**CITY OF CALISTOGA
PLANNING COMMISSION
SPECIAL MEETING MINUTES**

Wednesday, March 21, 2012
5:30 PM
Calistoga Community Center
1307 Washington St., Calistoga, CA

Chairman Jeff Manfredi
Vice Chairman Paul Coates
Commissioner Carol Bush
Commissioner Nicholas Kite
Commissioner Walter Kusener

**“California Courts have consistently upheld that development is a privilege,
not a right.”**

Among the most cited cases for this proposition are Associated Home Builders, Inc. v. City of Walnut Creek, 4 Cal.3d633 (1971) (no right to subdivide), and Trent Meredith, Inc. v. City of Oxnard, 114 Cal. App. 3d 317 (1981) (development is a privilege).

MEETING CALLED TO ORDER AT 5:34 p.m.

A. ROLL CALL

Present: Vice Chairman Paul Coates, Commissioners Carol Bush, Nick Kite and Walter Kusener. **Absent:** Chairman Jeff Manfredi (excused). **Staff Present:** Ken MacNab, Planning and Building Manager; Erik Lundquist, Senior Planner; and Derek Rayner, Senior Civil Engineer. **City Consultant Present:** Joe Gaffney (Green Valley Engineering).

B. PLEDGE OF ALLEGIANCE

C. PUBLIC COMMENTS

Norma Tofanelli, 1001 Dunaweal Lane. Ms. Tofanelli read correspondence she submitted at the meeting. Clarifies that her comment at the March 14th Planning Commission meeting regarding Chairman Manfredi and Commissioner Kite having to recuse themselves from the Enchanted Resort item was not meant to suggest anything suspicious or improper. Ms. Tofanelli recognizes that Commissioners Manfredi and Kite are required by law to recuse themselves because they own property within 500 feet of the project site.

D. ADOPTION OF MEETING AGENDA

MOVED by Commissioner Bush, seconded by Commissioner Kite, to approve the meeting agenda of March 21, 2012 as provided.

The motion carried with the following vote:

- AYES: (4) Coates, Bush, Kite, Kusener
- NOES: (0)
- ABSTENTIONS: (0)
- ABSENT: (1) Manfredi

E. COMMUNICATIONS/CORRESPONDENCE

[Thirteen communications regarding Agenda Item I-1 were received by staff and forwarded to the Planning Commission]

F. CONSENT CALENDAR

None.

G. TOUR OF INSPECTION

None.

H. NEW BUSINESS

1. COUNTYWIDE BICYCLE PLAN AND CITY BICYCLE PLAN UPDATE:

Presentation from the Napa County Transportation and Planning Agency (NCTPA) on the proposed update of the Countywide Bicycle Plan and City of Calistoga Bicycle Transportation Plan.

Senior Planner Lundquist introduced the item.

Mr. Eliot Hurwitz, Program Manager of the Napa County Transportation and Planning Agency gave a presentation on the Countywide Bicycle Plan update.

Vice Chair Coates asked for clarification on the proposal to construct a Class I path from the Fair Way extension to the Oat Hill Mine Trail.

Senior Planner Lundquist noted that staff has identified areas where the NCTPA plan is in conflict with the City's adopted plans and has prepared comments accordingly.

Commissioner Kite asked for clarification on what flexibility there will be to make changes to the bike plan in the future.

Mr. Hurwitz acknowledged that it is anticipated that the plan will evolve in the future.

Vice Chair Coates asked Mr. Hurwitz about the status of efforts by NCTPA to address concerns on the integration of bike paths and privately owned vineyards. Mr. Hurwitz indicated that NCTPA is working with the agricultural community in addressing their concerns.

Vice Chair Coates invited comments from anyone in attendance wishing to speak on this item.

Norma Tofanelli 1001 Dunaweal Lane. Ms. Tofanelli expressed concern that responsible farming is being characterized as a nuisance in the draft plan. She stated concern about the compatibility of biking and agricultural uses. She believes that biking is an infringement on agricultural uses and private property rights. Ms. Tofanelli is concerned that there are health and safety risks to bike riders and nuisances to private property owners that are not being recognized and that the approach of this plan is irresponsible.

Clarence Luvisi 285 Rosedale Road. Thanks NCTPA for their hard work in putting such a detailed and complex document together. Mr. Luvisi stated his support of Ms. Tofanelli's previous comments. Mr. Luvisi states concern that bike riders will unknowingly ride into vineyards that have just been spray-treated and will be exposed to health risks. Mr. Luvisi suggests that a "single page" of information on the rules of the road and on etiquette be prepared for distribution.

Robert Levenstein 2375 Pickett Road. Mr. Levenstein asks for confirmation that there will be a formal public hearing on the plan prior to its adoption.

Vice Chair Coates calls for Commissioner comments.

Commissioner Kusener expresses concern about potential safety issues and asks what the City's responsibility is to inform riders/sign paths about safety risks. Commissioner Kusener also suggests that vineyard owners and winery owners collaborate on how to make biking a safe experience for those visiting the valley.

Ms. Tofanelli distinguished that bike riders at wineries are invited guests, but for vineyard owners they are trespassers.

Hubert Verdeille, 17 Rosedale Road. Mr. Verdeille shared his personal accounts of interacting with bicyclists. He also noted that he has observed some bicyclists parking and unloading at wineries but not actually visiting the winery.

Commissioner Kite recognizes concerns about Class I lanes and believes that additional study and public review prior to any implementation of Class I lanes is appropriate. States support for this process and plan.

Commissioner Bush concurs with Commissioner Kite. Agrees that there is a need for better communication on bike laws and bike etiquette.

Vice Chair Coates expressed concern about the interface of bike paths and agricultural land – wants to be sure that this issue is addressed and that vineyard owners are involved in the process.

Vice Chair Coates advises staff that the direction of the Commission is to forward the draft plan to the City Council with recommendations.

I. PUBLIC HEARINGS

1. **BRIAN ARDEN WINERY (ZO 2011-01; PD 2011-01; U 2011-12 & DR 2011-10):** Consideration of a Zoning Text Amendment (ZO 2011-01), Preliminary and Final Development Plan (PD 2011-01), Conditional Use Permit (U 2011-12) and Design Review (DR 2011-10), requested by Burt Harlan, to establish a 10,000 case production winery and wine related uses including limited events, administrative offices, retail sales and tasting located at 331 Silverado Trail (APN 011-050-030) within the “PD”, Planned Development District.

Vice Chair Coates recuses himself from this item due to a business relationship he has with the adjoining property owner. **Commissioner Kite** chairs this item.

Commissioners Kite and Bush disclose that they have met with the applicant on the site to discuss the project.

Senior Planner Lundquist gave the staff report.

Burt Harlan Principal, Brian Arden Wines (Applicant). Mr. Harlan gives a presentation on the history of the project and covers some of the questions/points raised in communications submitted in response to the proposal.

Commissioner Kite asks Mr. Harlan for clarification on discrepancies in the square footage figures in his presentation and those presented in the staff report.

Commissioner Bush asked what the distance is between the closest point of the building and Silverado Trail.

Carlos Di Fede Principal, Di Fede Design Group (Applicant's Architect). Reviews considerations made in the design and placement of buildings. Also discusses materials selection and green building design features.

Andrew Simpson, Delta Engineering (Applicant's Engineer). Reviews area drainage conditions and proposed approach for managing post-development storm water runoff.

Commissioner Kite asks for clarification on the methodology used to calculate/measure existing storm water flows.

Commissioner Kusener questions how the proposed "sheeting" of discharged storm water gets controlled.

Mr. Harlan notes that the project has been adequately designed to comply with the legal requirements for post construction drainage.

Mr. Harlan notes that the project will comply with recently adopted "75%r rule" for winery grape sourcing.

Mr. Harlan notes that the project design reflects City guidelines and is appropriate given existing and proposed development in the area.

Commissioner Kusener questions how the City will know if the drainage will work as proposed by the project engineer. **Senior Planner Lundquist** explains that there will be monitoring and that the design has been reviewed and accepted by engineering staff.

Commissioner Kite asks the applicant if they are comfortable with the revised/more constrained event schedule.

[Planning Commission breaks for a five-minute recess]

Commissioner Kite opens the public hearing.

James Rose 1734 Emerald Drive (applicant's attorney, but speaking as citizen). Mr. Rose states that the legal issues raised have been satisfied. With regard to the drainage impacts, Mr. Rose notes that independent/neutral engineers have reviewed and accepted the proposed plan for storm water management. Mr. Rose believes the proposed winery is a beautiful project that will help promote local tourism. Mr. Rose fully supports the project.

Paul Bartelt, Principal, Bartelt Engineering, 1303 Jefferson Street, Napa (speaking on behalf of Mark and Teresa Aubert). Mr. Bartelt conducted a peer review of engineering study submitted by the Cassayre and Delta Engineering firms and has the following comments:

- Primary concern is the concentration of flow in southwestern corner of property.
- Believes that when the Aubert (formerly Briggs) Winery driveway was originally constructed across the subject property the design intent was to maintain "sheet flow" across road south into the adjoining Luvisi property.
- States that a berm created between the subject property and the Luvisi property to the south has changed intended drainage runoff pattern. Contends that the berm was created by City as when it constructed a water line.
- Contends that had original design intent been to convey drainage flows from the subject property, the design of the originally constructed Aubert Winery drainage facilities would have reflected that intent.
- Does not believe that the proposed detention and conveyance systems will work as intended. Difficult to recreate spread sheet-flow condition.

Commissioner Kite asks for clarification on Mr. Bartelt's position that water does not currently flow the way it is depicted on the submitted engineering plans. **Mr. Bartelt** acknowledges that it does flow the way that's being shown, but clarifies that the point of contention is that the current flow does not meet the original design

intent when the Aubert (Briggs) Winery was constructed. Mr. Bartelt states that the berm that was created has altered the flow.

Robert Levenstein 2375 Pickett Road. Informs the Commission of his background in land use and that he has no financial connection to the project applicant. Mr. Levenstein expresses his support for the project. Reads letter that he submitted for the record.

KR Rombauer, 3522 Silverado Trail. Mr. Rombauer suggests that the applicant and neighboring property owner should talk to each other. Mr. Rombauer expresses concern about the amount of development being contemplated in this entry corridor. Requests that the Planning Commission consider not approving the project.

Clarence Luvisi 285 Rosedale Road. Mr. Luvisi expresses concern that less than five members of the Commission are participating in this review and suggests that there is a need to expand to a nine-member Planning Commission. Mr. Luvisi thanks the Harlan family for reaching out to him and his brother to discuss their plans. Mr. Luvisi notes his support for the position reflected in the correspondence from the Meibeyer law group and Bartelt Engineering. Mr. Luvisi offers the following comments:

- Does not concur with Mr. Harlan's position that issues around the PD overlay language in the General Plan have been resolved.
- Reads the letter submitted by his brother Don Luvisi for the record, which is in opposition to the project.

Norma Tofanelli 1001 Dunaweal Lane. Ms. Tofanelli voices support for the neighbors concern about drainage. Ms. Tofanelli enters into the record a letter from land use attorneys in San Francisco regarding legal requirements for interpreting the General Plan. Reads/quotes from letter stating that the General Plan is law, and that local land use decisions must be consistent with the General Plan. Ms. Tofanelli states that policies in the General Plan that include the word "shall" are not open for interpretation as staff has suggested. Mandatory language like this cannot be ignored. Ms. Tofanelli states that she does not concur with or accept staff's interpretation of General Plan language regarding development on the slopes of Mt. Washington.

Ms. Tofanelli notes that the Thomas Bed & Breakfast proposal was rejected a number of years ago because it is too large, but now the Commission is entertaining approval of a project that is even larger.

Ms. Tofanelli expresses concern that the size of the winery being proposed is in conflict with the Municipal Code provisions for new wineries located in the Rural Residential Zoning District.

Mark Aubert 333 Silverado Trail. Mr. Aubert expresses concern about the proposed drainage plans. Mr. Aubert offers the following comments:

- Agrees with the anecdotal history of drainage provided in the testimony by the Luvisi's (e.g., that water historically sheet flowed across the subject property onto the Luvisi property immediately south).
- Expresses concern that the proposed improvement plans and drainage plans will result in flooding of his property.
- Supports original Sterk drainage design that allowed for historical sheet flow to continue onto Luvisi property.
- Believes Arden Winery proposal is too large for parcel that is only 2 acres in size.
- Mr. Aubert states it is City's responsibility to ensure drainage design meets legal requirements.

Commissioner Kite asks Mr. Aubert if he believes that water currently flows to corner of property where shown in plan. Mr. Aubert states yes, but very little. Mr. Aubert recognizes that current condition is a change from what once existed and that he would like to see a return to the historical condition.

Chuck Meibeyer 1236 Spring Street (attorney representing Mark and Teresa Aubert). Mr. Meibeyer offers following comments:

- Noted that he has invited the applicant and applicant's attorney to engage in a discussion for compromise but that the offer was never accepted.
- Notes that Arden presentation did not include porch area that wraps around proposed winery, and that with porch area the Arden Winery is much larger than Aubert Winery.

- States that he still does not understand what the exact size of the Arden Winery is, believes figures have been distorted.
- Believes that the Arden's have not done anything to respond to the Commission's concern that the buildings/project was too large.
- Believes that change in historic drainage condition and cause of that change is a CEQA issue that constitutes a disagreement among experts and that an EIR should be prepared.
- Concerned about traffic safety issues along Silverado Trail. Believes that County design requirements should be applied to project, not City requirements. Project should be required to put a left-turn lane in.
- Notes that PD zoning allows for flexible standards to be established. Believes that the proposed standards should reflect/ be guided by the standards established in the Rural Residential Zoning District.
- Believes that the proposed design of the Arden Winery does not reflect "small scale" low profile design like other project in the area (e.g., Helmer residence, Solage Resort) as required by the General Plan.
- Notes that in the Thomas Bed and Breakfast proposal, staff was very concerned about two-story development. Questions why the height of the proposed Arden Winery is not being more scrutinized and suggests that it is inconsistent with General Plan language calling for "low rise" design.
- In regard to characterizations that Mr. Aubert's opposition is a "vigilante attack" against the project, states that Mr. Aubert is only suggesting that the project should in scale with other development in the area – which in turn would minimize some of the impacts being discussed.
- Notes that Briggs Winery was established before current regulations and that the conditions placed on the Briggs Winery Use Permit are much more restrictive than what is being proposed for the Arden Winery Use Permit. Requests

that similarly restrictive conditions be applied to the Arden Winery.

Kristin Casey 1132 Denise Drive. Ms. Casey states that she believes the project design has been improved but feels the project still is too large. Ms. Casey reminds the Commission about the importance of the Entry Corridor requirements. States that when the General Plan was being developed, the idea of “understated visual appearance” was very important to those involved at the time. Notes that she was author of the “small scale, low rise” language and was told by the former Planning Director that the language would be interpreted to mean “one story”. Ms. Casey points to the Solage Resort project as an example that reflects the intent and proper interpretation of the Entry Corridor standards.

Commissioner Kite closes the public hearing.

Commissioner Bush asks for clarification on the Rural Residential requirements for wineries.

Commissioner Kite asks for confirmation that the Rural Residential Zoning District standards for wineries do not apply to this project. **Senior Planner Lundquist** confirms.

Commissioner Kusener observed that there has been testimony suggesting that restoration of the historic drainage condition (sheet flow over the subject property onto the Luvisi property to the south) is a preferred/desired condition. Commissioner Kusener asked Mr. Luvisi if he would be open to having the sheet flow condition restored. Mr. Luvisi responded with a qualified maybe.

Commissioner Kusener questioned whether it was fair to ask the Arden's to remedy a drainage situation (the berm) that has existed for many years.

Commissioner Kite notes that there seems to be consensus among all parties that drainage is currently conveyed to the corner of the Arden property. Commissioner Kite also notes the assertion that this condition is not representative of the historic drainage condition. Asks for clarification on what condition the applicant is required to respond to. **Senior Planner Lundquist** states that the current condition is what the applicant is required to design to.

Commissioner Kite asks if there is any evidence that a Mitigated Negative Declaration should not be adopted because the proposed

drainage improvements do not respond to or address the current drainage conditions. **Senior Civil Engineer Rayner** noted it is City's position that the berm in question existed (as shown in the 2002 topo maps presented earlier) prior to construction of the water line and that it was not created as a result of the City installing a water line. Mr. Rayner states that the proposed improvements have been accepted by the Public Works Department.

Commissioner Kite asks for staff's position on the question raised about the use of the word "shall" in the policy regarding development on the slopes of Mt. Washington. **Senior Planner Lundquist** concurs with public testimony that "shall" means shall. Mr. Lundquist distinguishes that the proposed building is not being built on the slopes of Mt. Washington but at its base – and therefore is not in conflict with the subject policy.

Planning Manager MacNab suggests that the intent of the subject policy was to prevent hillside development on the slopes of Mt. Washington and preserve its natural appearance. Mr. MacNab stated that it is within the Commission's discretion to interpret whether the base of Mt. Washington is part of its slope. Mr. MacNab noted that there would likely be little difference in terms of visual impact if the Commission were to interpret the base of Mt. Washington as being slope and then ask the applicant to move the building 10 feet forward. Mr. MacNab stated that is in within the Planning Commission's discretion to consider and apply the intent of a policy in a context-specific situation.

Commissioner Kusener asked if the project is in conflict with the requirement for a mix-of-uses in the Maxfield-Adams Beverage PD parcels. **Senior Planner Lundquist** stated no.

Commissioner Kusener asked if there were any policies against a clustering or concentration of businesses in the Entry Corridor area. **Senior Planner Lundquist** stated no.

Commissioner Kite asked for clarification on left-turn lane requirements, specifically: why the City and County have differing standards and why the County's standards are more restrictive.

Planning Manager MacNab informed the Commission that the area was walked with a representative from County Public Works and that there was a discussion on the County's use of a different threshold for left turn lanes. City staff was informed that the County is using a standard/threshold that may date back to the 1970's and

that the County has not updated its standards to current industry (CalTrans) standards.

Mr. MacNab also noted that the City traffic consultant evaluated the cumulative demand for a left turn lane resulting from trips generated by other existing/proposed projects in the area and that the consultant determined that no left turn lane was needed.

Commissioner Kite asked for clarification on whether there is requirement that parking be screened. **Senior Planner Lundquist** noted that the parking lot would be screened from view but that parked cars would likely be visible from Silverado Trail.

Commissioner Kite asked for clarification on changes to the height of the building. **Senior Planner Lundquist** noted that the height of the structure has been reduced, but that the building itself will be elevated three feet so there is no net reduction in building height.

Commissioner Kite asked for clarification on square footage and lot coverage. **Senior Planner Lundquist** explained that the differences in figures being presented is partially attributable to what the City includes in its calculations versus what others may consider to be coverage.

Commissioner Kusener suggests that a condition be imposed restricting use of the shared driveway for parking.

Commissioner Kusener asked if the conditions that were applied to the Briggs Winery Use Permit were going to be applied to the Arden Winery. **Senior Planner Lundquist** noted that conditions of approval have been included in the Resolutions approving the requested actions.

Commissioner Kite polls fellow Commissioners on whether there are any concerns with the environmental analysis, including drainage, or recommending adoption of a Mitigated Negative Declaration.

MOVED by Commissioner Bush, seconded by Commissioner Kusener, to adopt Resolution PC 2012-05 recommending to the City Council adoption of a Mitigated Negative Declaration based on an Initial Study prepared for the Brian Arden Winery Project incorporating the findings and mitigation measures as provided in the resolution.

The motion carried with the following vote:

- AYES: (3) Kite, Bush, Kusener
- NOES: (0)
- ABSTENTIONS: (1) Coates
- ABSENT: (1) Manfredi

Commissioner Kite polls fellow Commissioners on whether there are any concerns about the proposed Planned Development District.

Commissioner Kusener states that he is satisfied with the project's compliance with regulations and the proposed standards.

Commissioner Kite suggests that that the Planning Commission consider recommending that the maximum permitted height in the PD district be reduced from 35 feet to 30 feet.

MOVED by Commissioner Kite, seconded by Commissioner Bush, to adopt Planning Commission Resolution PC 2012-06 recommending to the City Council approval of a Zoning Text Amendment (ZO 2011-01) incorporating the findings as provided in the resolution, with the following recommendation:

1. Reduction of the maximum permitted height in the proposed PD district to 30 feet.

The motion carried with the following vote:

- AYES: (3) Kite, Bush, Kusener
- NOES: (0)
- ABSTENTIONS: (1) Coates
- ABSENT: (1) Manfredi

Commissioner Kite acknowledged the difficulty in determining how this project will look and feel despite the thorough analysis that's been presented. Mr. Kite notes that the Commission has been presented with the best and worst case scenario renderings.

Commissioner Bush states that she likes the design of the project but wishes it could be just a little smaller.

Commissioner Kusener states that he concurs with Commissioner Bush and finds the project to be attractive.

MOVED by Commissioner Kusener, seconded by Commissioner Kite, to adopt Planning Commission Resolution PC 2011-07 recommending to the City Council approval of a Preliminary/Final Planned Development Plan (PD 2011-01), Conditional Use Permit (U 2011-12) and a Design Review (DR 2011-10), and, for the project incorporating the findings and subject to the conditions of approval as provided in the resolution, with the following recommendation:

1. Inclusion of a Condition of Approval restricting use of the common driveway for parking.

The motion carried with the following vote:

- AYES: (3) Kite, Bush, Kusener
- NOES: (0)
- ABSTENTIONS: (1) Coates
- ABSENT: (1) Manfredi

J. MATTERS INITIATED BY COMMISSIONERS

None.

K. COMMENTS/PROJECT STATUS

None.

L. ADJOURNMENT

MOVED by Commissioner Kite, seconded by Commissioner Kusener, to adjourn to the next regular meeting of the Planning Commission on Wednesday, March 28, 2012, at 5:30 p.m.

The motion carried with the following vote:

- AYES: (3) Kite, Bush, Kusener
- NOES: (0)
- ABSTENTIONS: (0)
- ABSENT: (2) Manfredi, Coates

MEETING ADJOURNED AT 9:46 p.m.

Ken MacNab,
Planning Commission Secretary