

**CITY OF CALISTOGA
PLANNING COMMISSION
MEETING MINUTE EXCERPT**

**Wednesday, July 11, 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).

A. ROLL CALL

Present: Chairman Jeff Manfredi, Vice Chairman Paul Coates, Commissioners Nick Kite and Walter Kusener. **Absent:** Commissioner Carol Bush (excused). **Staff Present:** Ken MacNab, Planning and Building Manager, and Erik Lundquist, Senior Planner.

H. PUBLIC HEARINGS

- 2. BOUNSALL CONTRACTOR YARD:** Consideration of a request to determine if a Contractor's Office and Storage Yard is an allowable use in the "I", Light Industrial Zoning District pursuant to Section 17.26.020(K) of the Calistoga Municipal Code and consideration of a request for Conditional Use Permit (U 2012-04) to allow the operation of a contractor's office and storage yard on the property located at 414 Foothill Boulevard (APN 011-260-045 to -052; 011-260-076) within the "I", Light Industrial Zoning District.

Senior Planner Lundquist gave the staff report.

Commissioner Kite clarified that the zoning interpretation would not just be applied to the Bounsall property but to all properties designated Light Industrial. Mr. Kite asked staff where other Light Industrial zoned properties were located.

Commissioner Kite asked what protections the City would have [to ensure compatibility].

Senior Planner Lundquist stated that the City would retain Conditional Use Permit authority initially and subsequently if expanded at a later date.

Commissioner Kite asked if the City could apply reasonable design standards to proposals through this process. **Senior Planner Lundquist** responded yes.

Chairman Manfredi opened the public hearing and requested that the public first comment on the issue of similar use. Chairman Manfredi stated that if the Planning Commission finds that a contractor yard is a similar use it will then discuss the use permit issue and take additional comments from the public.

38 **Kerri Abreu** 1720 Reynard Lane. Ms. Abreu stated her opinion that the staff report
39 was not accurate and factual. Ms. Abreu stated that there are inconsistencies in it,
40 citing the noted acreage of the project site.
41

42 Ms. Abreu provided background information on when the complaint was first filed and
43 noted that to this day no written response has been provided by the Planning
44 Department.
45

46 Ms. Abreu recalled her discussion with Napa County officials in 2004 regarding the
47 heavy equipment and fuel tanks being stored on the property. Ms. Abreu stated that
48 the Napa County official commented that he was having trouble getting information
49 from the City of Calistoga.
50

51 Ms. Abreu stated her opinion that planning staff and the former City Manager have
52 failed in their judicial responsibilities.
53

54
55 Ms. Abreu stated that the Bounsall's did not get permits for trees they removed in
56 2007.
57

58 Ms. Abreu stated that the Bounsall's do not have a permit for the garden shed
59 structure.
60

61 Ms. Abreu stated that the Bounsall's do not have a permit for the utility trailer.
62

63 Ms. Abreu stated she finds it laughable that a general engineering contractor has a
64 garden shed and contractor yard operation.
65

66 Ms. Abreu stated her opinion that there has been a blatant attempt to cover up the
67 wrong-doing rather than take responsible action.
68

69 Ms. Abreu stated that its not fair to allow some people to continually violate City
70 regulations while at the same time holding other people to strict conformance, like the
71 Barberis family.
72

73 Ms. Abreu discussed some of her observations of what occurs on the property.
74

75 Ms. Abreu requested that the application be denied and said that any requested
76 change must be done the way things are supposed to be done.
77

78 **Commissioner Kite** acknowledged there is a lot of history and that Ms. Abreu was
79 upset. Mr. Kite asked Ms. Abreu if she was now satisfied with the actions now being
80 taken by the City. **Ms. Abreu** responded yes, but that the request needs to be
81 scrutinized and monitored if it is approved.
82

83 **Norma Tofanelli**, 1001 Dunaweal Lane. Ms. Tofanelli stated she has concerns
84 about allowing contractor yards in the Light Industrial Zoning District.

85
86 Ms. Tofanelli questioned how this one particular property came to be designated for
87 light industrial use.
88

89 Ms. Tofanelli expressed her concern about storing fuel near the Napa River, the
90 potential for contamination and the inability to really control contamination.
91

92 Ms. Tofanelli noted that she heard the City's corporation yard operation resulted in
93 the contamination of the Crystal Geysers well.
94

95 Ms. Tofanelli stated her belief that this contamination is the reason why Crystal
96 Geyser is leaving town and the reason behind the need for Crystal Geyser to truck
97 outside water into town.
98

99 Ms. Tofanelli questioned how the City will control contamination and the number of
100 trucks coming into town if it allows contractor's yards in the Light Industrial zoning
101 district.
102

103 **Elizabeth Hammond**, 304 Foothill Boulevard. Ms. Hammond noted that issues have
104 been going on since 2004.
105

106 Ms. Hammond read a statement into the record.
107

108 Ms. Hammond stated her position that the zoning should not be changed and
109 identified the different contractor yard uses on the property.
110

111 Ms. Hammond stated her opinion that the Bounsall's should not be rewarded and
112 fined instead.
113

114 Ms. Hammond recalled her experience in trying to get information on the Bounsall
115 property from the Planning Department over a period of time between 2007 and
116 2009. Noting that planning staff was unable to produce any information or permits.
117

118 Ms. Hammond shared information from the Napa County Assessor's office records
119 on what structures exist on the property.
120

121 Ms. Hammond alleged that the Bounsall's have been trying to retaliate against her for
122 the past six years.
123

124 Ms. Hammond alleged that the Bounsall's tampered with a survey marker on her
125 property.
126

127 Ms. Hammond discussed the three land designations on the Bounsall property and
128 the identified property owners.
129

130 Ms. Hammond alleged that the Bounsall's completed another structure in May that
131 appears to be another rental structures.

132
133 Ms. Hammond questioned the statement in the staff report that employees of use the
134 bathroom in the residence on the property.
135

136 Ms. Hammond alleged that there are illegal septic systems on the property.
137

138 Ms. Hammond read a letter from Ms. Francis Holmes - who sold the property to the
139 Marion Bounsall – which included appraisal information from the mid-1980's.
140

141 Ms. Hammond accused the Bounsall family of lying about everything they've done on
142 the property.
143

144 Ms. Hammond alleged that Erik Lundquist is guilty of collusion with the Bounsall's.
145

146 Ms. Hammond noted that Erik Lundquist is also the planner working on Enchanted
147 Resorts.
148

149 **Jeff Bounsall**, 414 Foothill Boulevard (applicant). Mr. J. Bounsall requested that he
150 be allowed to address the Commission on both issues being considered regardless
151 of the Commission's decisions. Mr. J. Bounsall noted that there have been a lot of
152 accusations made and would like to be able to rebut.
153

154 Mr. J. Bounsall noted that Ed Grimsley was allowed to have contractor storage on the
155 old airport property when it was industrial and stated that he believed contractor
156 storage is an allowable use.
157

158 **Joe Bob Hitchcock**, 1322 Berry Street. Mr. Hitchcock stated that he did not know a
159 lot about the history of the project, but based on the testimony he's heard he believes
160 there should be an independent investigation before this request be allowed to
161 proceed.
162

163 Mr. Hitchcock commented on the definition of contractor yard, noting that there are
164 low-end and high-end contractor yard uses. Mr. Hitchcock stated that he would not
165 support allowing contractor yards in light industrial without a better definition.
166

167 **Chairman Manfredi** closed the public hearing on the similar use portion of the item.
168

169 **Commissioner Kusener** asked if there was a standard definition for light industrial
170 and heavy industrial uses.
171

172 **Senior Planner Lundquist** responded by noting that in other jurisdictions there are
173 separate definitions for light and heavy industrial uses, but that in Calistoga there is
174 only a definition for light industrial.
175

176 Mr. Lundquist referred to Commissioner Kite's earlier comments that through the
177 Conditional Use Permit process the Commission has the ability to discern and
178 regulate between the two.

179
180 **Commissioner Kusener** commented that it is likely that the terms will mean different
181 things to different people.

182
183 **Commissioner Kusener** asked for clarification on whether the stated acreage
184 reflects the size of the entire property and how much of the property would be used
185 for the contractor yard use.

186
187 **Commissioner Kusener** asked if the owner would be able to move the contractor
188 yard operation around on the property once approved. **Senior Planner Lundquist**
189 stated that movement of the use from the location where approved would require
190 review and approval.

191
192 **Commissioner Kusener** asked what the distance was between the proposed
193 contractor yard use and Ms. Hammond's property. It was estimated that the distance
194 is approximately 100 yards.

195
196 **Planning Manager MacNab** provided additional information on what distinguishes
197 light industrial and heavy industrial uses – noting that heavy industrial uses tend to
198 generate nuisances such as odors, noise, hazardous waste, etc. Mr. MacNab
199 reiterated earlier discussion that the Commission's ability to control the type of uses
200 allowed in the Light Industrial zoning district is through the Conditional Use Permit
201 process and that staff would recommend that if the Commission finds contractor
202 yards to be a similar use, it be allowed only as a conditionally permitted use.

203
204 **Commissioner Kusener** stated that some of the uses Mr. MacNab are allowed
205 already allowed in Light Industrial and that there appears to be a mixing of heavy and
206 light industrial uses in the Light Industrial districts.

207
208 **Senior Planner Lundquist** reviewed the findings that the Planning Commission
209 needs to make to determine whether is use is similar to other uses allowed in the
210 district.

211
212 **Commissioner Kite** clarified that while there is an identified list of uses allowed in
213 the district it does not mean they would automatically be approved. The uses would
214 first be subject to condition use permit and design review approval.

215
216 **Vice Chairman Coates** identified a number of issues he would like the applicant to
217 address when he speaks, including fuel containment. Vice Chairman Coates
218 questions whether the Commission should try and create some guidelines for
219 contractor yard uses.

220
221 **Senior Planner Lundquist** noted that the City does have guidelines that would be
222 applicable to contractor yard uses, including standardized conditions of approval.
223

224 **Planning Manager MacNab** noted that the contractor yard use would be required to
225 go through the same process and subject to the same conditions as any other use
226 that is conditionally permitted in the district.
227

228 **Commissioner Kite** stated that he does not have any issues with finding a
229 contractor yard use to be similar to other currently allowed used in the district.
230

231 **Commissioner Kusener** stated he too felt the use was similar enough to other uses
232 currently allowed in the district.
233

234 **MOVED** by Chairman Manfredi, seconded by Commissioner Kusener, to direct staff
235 to file a Notice of Exemption for the project pursuant to Section 15303 of the CEQA
236 Guidelines.
237

238 The motion carried with the following vote:
239

- 240 •AYES: (4) MANFREDI, COATES, KITE, KUSENER
- 241 •NOES: (0)
- 242 •ABSTENTIONS: (0)
- 243 •ABSENT: (1) BUSH
- 244

245 **MOVED** by Vice Chairman Coates, seconded by Chairman Manfredi, to adopt PC
246 Resolution 2012-19 determining pursuant to Section 17.02.190 of the Calistoga
247 Municipal Code that a contractor's office and storage yard are similar to those uses
248 listed in the "I", Light Industrial Zoning District.
249

250 The motion carried with the following vote:
251

- 252 •AYES: (4) MANFREDI, COATES, KITE, KUSENER
- 253 •NOES: (0)
- 254 •ABSTENTIONS: (0)
- 255 •ABSENT: (1) BUSH
- 256

257 **Chairman Manfredi** opened the discussion on the second issue/consideration in this
258 item.
259

260 **Chairman Manfredi** explained that the existing structure on the site will require
261 installation of fire sprinklers. The requirement for fire sprinklers will involve
262 installation of a holding tank and fire pump. Chairman Manfredi stated that without
263 any information about the location or design of the tank he is concerned about
264 proceeding – citing the Moye water tank as an example of what could wrong.
265

266 **Chairman Manfredi** suggested that the Planning Commission should require details
267 on the water tank – its location, how it will be screened, etc. – before proceeding with
268 this review.
269

270 **Jeff Bounsall**, 414 Foothill Boulevard. Mr. Bounsall was agreeable to continuing the
271 item as suggested by Chairman Manfredi.

272
273 Mr. J. Bounsall informed the Planning Commission that it is their intent to appeal this
274 item to the City Council.

275
276 Mr. J. Bounsall asked to respond to Commissioner Kusener's question of how the
277 property came to be designated for light industrial uses.

278
279 **Commissioner Kusener** clarified that his question is not so much about how the
280 zoning came into existence as it was about what will actually happen on the property
281 if the use is approved.

282
283 **Mr. J. Bounsall** stated he misunderstood Commissioner Kusener's question and
284 indicated he wanted to discuss the survey issue. Mr. Bounsall provided the Planning
285 Commission with background information on the difference of opinion between the
286 property line survey's conducted by the Bounsall's and the Hammond's.

287
288 **Chairman Manfredi** advised Mr. Bounsall to keep his comments focused on the
289 issue before the Commission.

290
291 **Mr. J. Bounsall** stated that he should be allowed to continue because others were
292 not restricted during their comments.

293
294 **Mr. J. Bounsall** stated that they were going to file a harassment suit against the
295 Hammonds.

296
297 **Commissioner Kite** stated that Mr. Bounsall's comments are not pertinent to the
298 issue before the Planning Commission.

299
300 **Mr. J. Bounsall** asked Planning Manager MacNab if they could just appeal this item
301 to the City Council. **Planning Manager MacNab** advised that the only action taken
302 by the Commission is the determination that a contractor yard is a similar use to other
303 uses allowed in the Light Industrial zoning district. The Planning Commission has not
304 acted on the Use Permit request so there is no action to appeal. Mr. MacNab stated
305 that it may be possible for a Councilmember to call the item up, but he would have to
306 check.

307
308 **Senior Planner Lundquist** asked Mr. J. Bounsall if he would like the Planning
309 Commission to deny the Use Permit request.

310
311 **Mr. J. Bounsall** indicated that they believe the fire suppression is unnecessary in
312 such a small office space.

313
314 **Senior Planner Lundquist** suggested three options for Mr. J. Bounsall to consider:
315 (1) continue the item to allow the Bounsall's time to address the fire tank issues; (2)
316 request that the Planning Commission deny the conditional use permit: or (3)

317 conditionally approve the use permit subject to subsequent review and approval of
318 the fire tank.

319 **Mr. J. Bounsall** stated he needs to defer to his brother on the options.

320 **Bill Bounsall**, 1624 North Oak Street (applicant). Mr. B Bounsall asked for
321 clarification from the Commission on what level of detail they would like to see for the
322 fire sprinkler related improvements.
323

324 **Chairman Manfredi** stated that Commission was looking for information on the fire
325 sprinkler system, including the size and location of the tank, where the fire pump
326 goes and how it is enclosed, and where these things are located in relationship to the
327 trailer.
328

329 **Mr. B. Bounsall** asked why the Use Permit can't be approved if we know everything
330 can be designed to work.
331

332 **Chairman Manfredi** stated that the Planning Commission needs to see what the
333 system looks like.
334

335 **Mr. B. Bounsall** questioned why any of this is required if the use is grandfathered.
336

337 **Chairman Manfredi** stated the information is required for consideration of the Use
338 Permit.
339

340 **Commissioner Kite** noted that the Commission is not reviewing the question of
341 whether this is a grandfathered use.
342

343 **Mr. B. Bounsall** stated that two attorneys have told them that the use is a
344 grandfathered use.
345

346 **Chairman Manfredi** reiterated that the consideration before the Planning
347 Commission is a use permit and that there are certain requirements that must be
348 addressed. Mr. Manfredi stated that they need the requested information to be able
349 to avoid past mistakes.
350

351 **Commissioner Kite** asked for clarification from staff on whether the use is
352 grandfathered.
353

354 **Planning Manager MacNab** informed the Commission that for staff to be able to
355 determine if the use is grandfathered staff needs documentation that demonstrates
356 the use was legally established.
357

358 **Commissioner Kite** suggested that the decision to apply for a use permit is a
359 decision not to contest the determination that the use is not grandfathered.
360
361
362

363 **Planning Manager MacNab** stated that because this is a code enforcement action
364 the applicant was given the choice of either removing the contractor yard use or
365 applying for a Conditional Use Permit. The applicant was compelled to make the
366 application, it was not a voluntary action.

367
368 Mr. MacNab stated that if the applicant believes the use is grandfathered they can
369 provide staff with documentation that shows the use was legally established and it
370 will be considered. Mr. MacNab stated if the use was legally established it would
371 change the discussion.

372
373 Mr. MacNab concurred with Chairman Manfredi suggestion that the item be
374 continued to give the applicant time to decide how they want to proceed.

375
376 **Commissioner Kite** asked what the proper procedure for contesting staff's
377 determination that the use is not grandfathered.

378
379 **Planning Manager MacNab** responded that staff's decision can be appealed.

380
381 **Chairman Manfredi** suggested that the Bounsall's need to decide whether they want
382 to proceed with the use permit application or appeal staff's determination that the use
383 is not grandfathered.

384
385 **Senior Planner Lundquist** summarized the steps that would be taken should the
386 Bounsall's decide to proceed with the use permit application.

387
388 **Commissioner Kusener** stated he has additional comments to make about the
389 proposed use permit and asked if this was the appropriate time to make them.

390
391 **Commissioner Kusener** asked for clarification on how issues of potential
392 contamination and/or hazardous waste are addressed.

393
394 **Senior Planner Lundquist** recited a number of regulations and conditions that
395 already exist and/or are included in the recommended conditions of project approval
396 that address these issues.

397
398 **Commissioner Kite** stated he would like more information on the types of vehicles to
399 be parked/stored, the types of racks that would be used, etc.

400
401 **Mr. B. Bounsall** stated he felt a lot of the information discussed has already been
402 provided. Mr. B. Bounsall disputed the suggestion that the site plan was inadequate
403 and also said hazardous materials have been addressed.

404
405 **Chairman Manfredi** suggested that the item be continued for one month.

406
407 **Mr. B. Bounsall** had no objection to continuing the item as long as they remain in
408 good standing.

410 **Chairman Manfredi** responded to inquiries he's received about other entitlements
411 that the Bounsall's have. Mr. Manfredi noted that Bounsall's do not have approval to
412 construct a winery. Mr. Manfredi stated that the winery proposal has not been
413 approved and is not a done deal.

414
415 **MOVED** by Chairman Manfredi, seconded by Commissioner Kite, to table this portion
416 of the item to allow time for the Bounsall's to decide how they would like proceed/or
417 return with the requested information.

418
419 The motion carried with the following vote:

420 •AYES: (4) MANFREDI, COATES, KITE, KUSENER

421 •NOES: (0)

422 •ABSTENTIONS: (0)

423 •ABSENT: (1) BUSH

424
425