

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

**Wednesday, July 18, 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 5:37 p.m.

A. ROLL CALL

Present: Chairman Jeff Manfredi, Vice Chairman Paul Coates, Commissioners Carol Bush, Nick Kite and Walter Kusener. **Absent:** None. **Staff Present:** Dan Takasugi, Public Works Director/City Engineer, Ken MacNab, Planning and Building Manager; and Erik V. Lundquist, Senior Planner. **City Consultant Present:** Jason Brandman, Grant Gruber and Greg Tonkovich of Michael Brandman Associates, MBA (Environmental Consultants), Dalene Whitlock of W-trans (Traffic Consultant)

B. PLEDGE OF ALLEGIANCE

C. PUBLIC COMMENTS

Public Comments is time reserved on each regular meeting agenda to provide an opportunity for the public to directly address the Planning Commission on items of interest to the public, which do not appear on the agenda. Comments should be limited to three minutes. The Commission will not be able to take action on items raised during Public Comments.

None.

D. ADOPTION OF MEETING AGENDA

MOVED by Commissioner Bush, seconded by Vice Chair Coates, to approve the meeting agenda of July 18, 2012 as provided.

The motion carried with the following vote:

- AYES: (5) Manfredi, Coates, Bush, Kite, Kusener
- NOES: (0)

- ABSTENTIONS: (0)
- ABSENT: (0)

E. COMMUNICATIONS/CORRESPONDENCE

Items of correspondence were received regarding the Enchanted Resorts project, which were forwarded to the Planning Commission in advance of the meeting.

F. CONSENT CALENDAR

MOVED by Commissioner Bush, seconded by Chairman Manfredi, to approve the special meeting minutes of June 20, 2012 as provided.

The motion carried with the following vote:

- AYES: (5) Manfredi, Coates, Bush, Kite, Kusener
- NOES: (0)
- ABSTENTIONS: (0)
- ABSENT: (0)

G. TOUR OF INSPECTION

Items on this agenda containing an asterisk (*) are designated for the Tour of Inspection. Shortly after 5:30 p.m., the Planning Commission will leave the Community Center to inspect these sites and will return as soon thereafter as possible. The purpose of this inspection is to view the physical characteristics of the site only—no action is taken by the Planning Commission on the site. The Planning Commission may eliminate one or more sites on the tour identified with an asterisk (*). The public is welcome to join the Planning Commission on its tour of inspection.

None

H. PUBLIC HEARINGS

1. **ENCHANTED RESORTS:** Consideration of a recommendation to the City Council regarding a General Plan Amendment (GPA 2010-01), Zoning Text Amendment (ZO 2010-01), Vesting Tentative Subdivision Map (TTM 2010-01), Preliminary and Final Development Plan (PD 2010-01), Conditional Use Permit (U 2010-02), Design Review (DR 2010-04) and Development Agreement (DA 2010-01) requested by Enchanted Resorts Inc., to develop the Enchanted Resorts Project on the 88-acre project site. The project would feature 110 resort hotel units (grouped among 36 cottages), 20 residence club units, 13 custom residences, public restaurant and bar, event facilities, spa and swimming pools, and parking and support facilities. Offsite sewer and recycled water improvements

would be installed. The property is located at 515 Foothill Boulevard (011-310-031 through 011-310-041 and 011-310-044; 011-320-007; 011-320-039 through 011-312-069; and 011-310-024). The Planning Commission will also consider a recommendation to the City Council on the certification of Final EIR. *** *This item was continued from the June 27, 2012 regular meeting of the Planning Commission.* ***

Chairman Manfredi and **Commission Kite** announced they would be recusing themselves from the following item because they are neighboring property owners.

Vice Chair Coates received the gavel and welcomed everyone back. Vice Chair Coates thanked everyone for remaining polite and courteous during the public comments. He then outlined the meeting format and how the Commission will conduct its review of this item.

Senior Planner Lundquist gave a background report on project milestones and a report responding to public comments raised during the public hearing including issues related to the General Plan Amendment, Rezoning, General Plan of consistency findings, building heights and parking.

City Engineer Dan Takasugi gave a report on the City's water availability and wastewater capacity.

Commissioner Kusener asked if the City's 1.5 million gallon water tank currently under construction would remedy the concern expressed in the General Plan that the City does not have enough water for fire suppression.

City Engineer Takasugi responded saying that is correct

Commissioner Kusener asked if the City would experience any affect in water service when the tank is being filled for a short period of time.

City Engineer Takasugi responded saying no since the amount is minor in comparison to what the City supplies.

Commissioner Bush asked when the tank would be finished.

City Engineer Takasugi responded saying early summer 2013.

Senior Planner Lundquist introduced Grant Gruber from MBA

Mr. Grant Gruber explained MBA's relationship with the City as the City's independent environmental review consultant who under contract with the

City prepared the Environmental Impact Report for the Enchanted Report Project. Mr. Gruber provided a report responding to public comments raised during the public hearing including issues related to wildlife movement corridors and the Northern Spotted Owl.

Ms. Dalene Whitlock provided a report responding to public comments raised during the public hearing including issues related to project impacts in context of regional traffic volumes, the project peak versus roadway segment peaks and the effect on traffic delay if the project is scaled back.

Mr. Greg Tonkovich provided a report responding to public comments raised during the public hearing including issues related to noise propagation including a discussion related to trees and vegetation effect on noise, noise reflection off structures and canyons and an explanation of the noise modeling contained in the EIR

Mr. Aaron Harkin (representing Enchanted Resorts, Inc. – Applicant) gave an overview of the property ownership and introduced the development team including John Williams, Environmental Resource Solutions, Inc.; Mark Sopp, SB Architects; Diane Kindermann, Abbot & Kindermann; and Rick Riess, Icon Resorts.

Mr. John Williams (Environmental Resource Solutions, Inc., Applicant's Forester) provided a report responding to public comments raised during the public hearing in order to clarify the number of trees to be removed from the project, to provide information on the Northern Spotted Owl surveys, to clarify the conversion permit & timber harvest plan process and to provide clarification on tree removal within the 100 foot defensible space around structures in the project area.

Mr. Mark Sopp (SB Architects, Applicant's Architect) gave an overview of project's intent of mitigating site disturbance and responded to public comments raised during the public hearing regarding exposure of the project along the southern boundary. Mr. Sopp showed a video helicopter view of the property illustrating the view shed impacts.

Ms. Diane Kindermann (Abbot & Kindermann, Applicant's Attorney) thanked the Planning Commission for the opportunity to speak. Ms. Kindermann summarized the community involvement & participation regarding the project. She then explained the General Plan Amendment process and the land use tool box. Ms. Kinderman concluded by explaining the California Environmental Quality Act (CEQA) requirements specifically noting the requirements for the Statement of Overriding Considerations and submitting that the City's own team of experts has determined that there will be no project specific significant environmental

impacts as a result of the project, with exception to the cumulative traffic impacts that are not directly related to the project. She urged the Planning Commission to support the project, which has no project specific environmental impacts and will send a message to investors that Calistoga is a community that has balanced growth and economic vitality.

Mr. Aaron Harkin in closing remarks stated that screening the project will further mitigate impacts to adjoining properties and that tree thinning does not include clear cutting and that it is the intent to marry the trees with the natural environment. Mr. Harkin stated that this project is the appropriate size for the land by explaining the proposed floor area ratio in comparison to other approved projects. Mr. Harkin concluded by stating reason way this project s in keeping with the principals of Calistoga.

Vice Chair Coates called for a recess.

Vice Chair Coates reconvened the meeting. Mr. Coates indicated he had taken notes of the public comments and that staff has addressed the comments relating to the EIR, grade, building heights, trees, screening, light, noise, view shed, traffic concerns, water availability, general plan changes, drainage, and timber harvest. Mr. Coates than asked the other Commissioners if they had any additional questions.

Commissioner Kusener asked Mr. Harkin to confirm that the construction activity would occur during the dry season.

Mr. Harkin confirmed that earthwork (e.g. roadway and infrastructure) would occur during the dry season the vertical building can occur.

Commissioner Kusener asked Mr. Harkin if there was way to publicly identify on the web site or other location that the requirements of the Mitigation Monitoring and Reporting Program were adhered too.

Mr. Harkin agreed that it was a good approach for oversight.

Commissioner Kusener asked Mr. Williams if he considered the forest dangerous from a fire point of view.

Mr. Williams explained that any unmanaged forest or property as the potential under the right conditions to be a fire hazard.

Commissioner Kusener asked if the City should be concerned about the hillside whether the project is approved or denied.

Mr. Williams stated yes, under the current circumstances the property is a potential hazard.

Commission Kusener noted that the benefit of the project among other things would be the management of the forest improving public safety.

Mr. Williams agreed indicating that this helps protect the community from fires starting on the property but also to protect the property from fire starting in the community.

Commission Kusener asked if Mr. Williams had any concern about erosion as a result of tree removal.

Mr. Williams noted that the stringent requirements of the THP indicating it is the functional equivalent of an EIR, which require all the impacts to be mitigated.

Commission Kusener ask Mr. Harkin when he would like to start the project.

Mr. Harkin responded that once they obtain approval building design will occur and reviewed by the City the construction will begin.

Commission Kusener asked if the Board of Supervisors letter addressed to Mr. Gingles regarding the allocation of housing mitigation fees has been addressed. Specifically, he asked if the funds would leave the City. Commissioner Kusener also asked if the County's request for further analysis on housing demand in relationship to employment had been provided.

Planning and Building Manager MacNab responded stated that the fees collected are spent in the City for the purposes collected noting that the funds would not be shared with the County.

Commission Kusener stated we still have the housing needs to address. He asked if there has been any response to that.

Senior Planner Lundquist noted that the Final Environmental Impact Report addressed the Board of Supervisor's letter and asked Mr. Gruber if he would comment on the matter.

Mr. Gruber noted that the housing issue is not an environmental issue and is outside of the CEQA process, but as a standard practice the City Municipal Code requires the project to meet its housing obligation and the project is doing so through the payment of in lieu fees.

Commissioner Kusener responded wondering if the County received a response to the question.

Planning and Building Manager MacNab provided background on the context of the County's comment noting the City Council has been concerned with taking on the County's housing obligation.

Commissioner Kusener stated he was just hoping for a response that would help us understand a little bit more on how to resolve the ongoing issue of affordable housing resulting from resort development and that is all the questions he had at the moment.

Commissioner Bush asked Senior Planner Lundquist how many times the General Plan has been amended since 2003.

Senior Planner Lundquist responded he believed it was about 6 to 9 times since 2003.

Commissioner Bush responded noting the City has been very cautious about amending the General Plan.

Senior Planner Lundquist stated that the City has initiated the amendments with exception to one privately initiated amendment.

Commissioner Bush asked if there would be a delay in fire and police response time.

Senior Planner Lundquist stated that the Police and Fire Department's provided their comments noting there would not be a delay as a result of this project meeting their service requirements.

Commissioner Bush asked if this project would result in the raising of sewer and water rates.

Senior Planner Lundquist responded no.

Commissioner Bush asked if the new water tank was being constructed to accommodate new projects.

City Engineer Takasugi responded stating the water tank was needed whether we have new projects or not.

Commissioner Bush asked Mr. Harkin if the resort would operate 24/7 and what activities would occur at the late night hours.

Mr. Harkin responded stating security, room service and staff to respond to late guest needs would occur in the evening hours.

Commissioner Bush asked Mr. Harkin if they were also planting trees as well as removing trees.

Mr. Harkin said yes they will be planting trees as commensurate with the forest and terrain.

Commissioner Bush asked if there was an evacuation plan in the event of an emergency.

Mr. Harkin stated that the site has been designed and reviewed by the City third party consultant to determine fire safety and that an evacuation plan will be design by the operated once enacted that could be addressed as a condition of approval.

Commissioner Bush asked staff how many acres were converted to vineyard on Diamond Mountain Road.

Senior Planner Lundquist noted approximately 345 acres.

Commissioner Bush said she had no more questions.

Vice-Chair Coates noted he is concerned with single family residences on the property because of fire danger and the overall benefits to the City are limited. Vice Chair Coates said the overall project is not as concerning because we would have greater control over the managing entity. He stated concern with the 13 homes resulting in a situation like Fountain Grove, destroying the ridgeline by the homeowners trimming trees.

Mr. Williams acknowledged the danger of fire and noting managing the forest helps with protection but it does not prevent fire. Mr. Williams noted the defensible space has been modeled at a level similar to a healthy forest. Mr. Williams stated removing the understory of the trees will leave the crown of the trees that will continue to screen the homes.

Mr. Harkin further noted that the home lot orientation further reduces view shed impacts and provides screening.

Commissioner Coates wanted confirmation that in 5 years he would not see the homes.

Mr. Harkin noted the Design Guidelines and home style will provide further assurance that the homes will be screened.

Commission Coates asked if each home would be subject to Planning Commission approval.

Senior Planner Lundquist noted that the developer's Architectural Committee would review the homes prior to building permit issuance.

Commissioner Coates expressed concern and suggested that the Commission review each home.

Mr. Harkin suggested as an alternative having a public official sit on the committee.

Commissioner Coates expressed his concern not having a public review.

Mr. Harkin said they are open but wanted an efficient process.

Vice Chair Coates asked for consensus of the Commission.

Commissioner Bush said design review with the Planning Commission should be required.

Commissioner Kusener assumed it was already required.

Planning and Building Manager MacNab explained a specific mitigation measure that requires City oversight of tree removal for visual impacts of tree removal.

Vice Chair Coates restated his concern with fire.

Mr. Williams noted that the examples of Fountain Grove and Riebli Road are different since site conditions are quite different. He further noted the process for tree removal and the oversight of the City.

Vice Chair Coates noting it seems they were getting to the end. Vice Chair Coates stated that through his experience as a City Council member they need to look to the future and protect the community. Vice Chair Coates explain that the opportunities for development are limited and the City needs to use its tools like the General Plan Amendment to protect the City. Vice Chair Coates described the project's benefits on water and wastewater rates and infrastructure. The decision makers are doing the best they can for the benefit of the community.

Vice Chair Coates stated the next thing they need to do is come to the census on the issues and take a vote. Vice Chair Coates noted that there are three actions that require approval by all three members of the

Commission if all three members do not vote the project stops at that point. Vice Chair Coates asked if staff had any input before the Commission starts.

Senior Planner Lundquist stated that prior to each action the Planning Commission may want to discuss the modifications that were suggested like adding a condition of approval for screening if there is nothing to discuss make a motion and take a vote.

Vice Chair Coates stated the first action is the environmental impact report and what it does is to recommend certification approval of the EIR regardless of the position on the project itself. Vice Chair Coates noted that if the EIR does not pass with a minimum of two Commissioners voting in favor the remaining Resolutions can not be approved.

Commission Kusener asked Mr. Harkin if before voting if he wanted to discuss further additional traffic mitigation.

Mr. Harkin stated that traffic seems to be the matter of concern but one could argue that fundamentally a room reduction or two has a huge financial strain on the project but not an overall traffic impact so the bottom line is they are willing to negotiate with the City Manager further traffic mitigation fees to retain the size of the project

Commissioner Bush noted that most of the traffic is bypass or regional traffic is there a way to get them to pay their fair share of the traffic problems.

Senior Planner Lundquist noted that the Enchanted Reports project is a good opportunity to mitigate the situation and asked Dalene Whitlock if she had any response to collecting fees for regional traffic.

Ms. Whitlock said there is a need to relook at the City's fee structure to actually pay for the cost of construction and Caltrans should also help fund the intersection improvements since the roadways are theirs. Ms. Dalene stated the City is lucky to have a mitigation fee established and while the City has development the City should up the fee to pay for actual cost to mitigate the intersection although it will never be enough but the City can use the money to leverage other sources to get Caltrans attention to help.

Vice Chair Coates asked if there were any more questions, seeing none he moved to adopt a Resolution recommending certification of the Final Environmental Impact Report, including adoption of a Statement of Overriding Considerations and a Mitigation Monitoring and Reporting

Program pursuant to the California Environmental Quality Act (CEQA) for the Enchanted Resorts Project.

Commissioner Bush seconded the motion.

The motion carried with the following vote:

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

Vice Chair Coates noted that the next action is a General Plan Amendment and stated that it does not pass unless it receives three votes. Vice Chair Coates further stated if the General Plan Amendment does not pass then the remaining Resolutions can not be approved.

Commissioner Bush moved adopt a Resolution recommending to the City Council approval of an amendment to the General Plan Overlay Districts Map, Figure LU-6 to include those properties generally located at 515 Foothill Boulevard (011-310-031 through 011-310-041 and 011-310-044; 011-320-007; 011-320-039 through 011-320-069; and 011-310-024) within Planned Development Overlay Designation and establishing associated Planned Development goals for the Enchanted Resorts properties.

Commissioner Kusener seconded the motion.

The motion failed with the following vote:

- AYES: (2) Coates, Bush
- NOES: (1) Kusener
- ABSTENTIONS: (0)
- ABSENT: (2) Manfredi, Kite

Vice Chair Coates stated that since the motion failed the Commission can not act further.

Planning and Building Manager MacNab clarified since the General Plan Amendment is a legislative act it fails with a 2 to 1 vote. A legislative action requires the majority vote of the total membership of the Commission or all three votes in this case. Mr. MacNab further stated since this action has failed the following actions all require consistency with the General Plan and since the Commission has not supported the General Plan Amendment the Commission can not make General Plan

Consistency findings. Mr. MacNab stated that the Commission should just conclude the matter since there is no reason to vote on the remaining actions.

Vice Chair Coates noted for the audience that the Planning Commissions actions are recommendations and all the matters will be presented to the city Council for consideration.

Planning and Building Manager confirmed that the City Council will take the final action on this project and consider the recommendations of the Planning Commission.

Vice Chair Coates closed the item.

I. NEW BUSINESS

None.

J. MATTERS INITIATED BY COMMISSIONERS

Commissioner Kusener stated he was not clear that a 2 to 1 vote in favor of this project would not allow it to move forward. Mr. Kusener expressed that the voting population of the Commission is limited and that he feels a 2 to 1 vote is a winning score.

Vice Chair Coates stated by law we can not move on.

Planning and Building Manager confirmed that the General Plan Amendment requires the majority vote of the Planning Commission and since only three are participating in the vote all three need to vote in favor in order for the motion to carry. Mr. MacNab stated as alternative one of the members who were in the majority of the vote may move to reconsider the item and take a new vote.

Commissioner Kusener stated that that would not change the outcome because he feels strongly about the amendments to the General Plan and some other issues but in fairness to the applicant it doesn't seem fair that the project can not move forward without a recommendation to the City Council. Mr. Kusener stated that the voting population is in favor but doesn't understand the logic in the law.

Planning and Building Manager stated that since this is a legislative act it requires the highest voting threshold and since it is the law we don't have options.

Vice Chair Coates asked if there were any other matters.

K. COMMENTS/PROJECT STATUS

Planning and Building Manager MacNab stated that a Planning Commission will occur on July 25, 2012 wherein a concept review will be present for a Calistoga Affordable Housing development plan at 611 Washington Street and there will not likely be any items on August 8, 2012.

L. ADJOURNMENT

MOVED by Commissioner Bush, seconded by Commissioner Kusener, to adjourn to the July 25, 2012 regular meeting of the Planning Commission.

The motion carried with the following vote:

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

MEETING ADJOURNED AT



Ken MacNab,
Planning Commission Secretary