

MINUTES

CALISTOGA PLANNING COMMISSION

August 14, 2013

1 The meeting was called to order at 5:30 pm.

2 **A. ROLL CALL**

3 Commissioners present: Chairman Jeff Manfredi, Vice Chairman Paul Coates,
4 Commissioners Carol Bush, Scott Cooper and Walter Kusener. Staff present:
5 Planning & Building Director Lynn Goldberg, Senior Planner Erik Lundquist.

6 **B. PLEDGE OF ALLEGIANCE**

7 **C. PUBLIC COMMENTS**

8 There were no public comments.

9 **D. ADOPTION OF MEETING AGENDA**

10 The meeting agenda of August 14, 2013 was unanimously adopted as
11 presented.

12 **E. COMMUNICATIONS/CORRESPONDENCE**

13 A letter from Matthew Moyer regarding item G.2. was distributed to the
14 Commission.

15 **F. CONSENT CALENDAR**

16 **1. Minutes for the July 24, 2013 Planning Commission meeting**

17 The July 24, 2013 Minutes were accepted as presented.

18 **G. PUBLIC HEARINGS**

- 19 **1. AT&T Foundation Repair Project CUP 2009-03:** Consideration of a
20 Conditional Use Permit request to allow the stabilization of the equipment
21 building by installing helical anchors and constructing a grade/beam
22 retaining wall along the south side of the structure located at 1310 Lincoln
23 Avenue. Once the foundation repair and hillside support is complete, the
24 City of Calistoga will install a pathway by generally affixing decking to the
25 new grade beam.

26 **Senior Planner Lundquist** presented the staff report and recommended
27 the adoption of a mitigated negative declaration for the project and
28 approval of the conditional use permit, based on the findings described in
29 the written report. The purpose of the project is to stabilize the river bank
30 and building foundation, which are failing. He reviewed comments that had
31 been submitted from the California Department of Fish & Wildlife (CDFW),
32 noting that staff believes that they have been adequately addressed. The
33 150 feet of pathway that would be subsequently installed between the

34 building and river will be reviewed by the City Council, subject to the
35 negotiation of an easement.

36 **Chairman Manfredi** asked for questions from the Commission.

37 **Vice Chairman Coates** noted that CDFW's comments about possible
38 debris, invasive species, etc., from the pathway seem vague, and asked
39 whether CDFW will present future hurdles for the City. Mr. Lundquist
40 responded that there may be a possible hurdle if construction occurs
41 during nesting season, which would require a nesting survey. He doesn't
42 believe that CDFW has ever visited the site and doesn't understand the
43 circumstances of the project. Providing the pathway in this area is
44 consistent with the General Plan and will not be encroaching into any
45 sensitive habitat area because it will be constructed on top of the
46 reinforcement improvements.

47 **Commissioner Kusener** observed that it is clear that the river bank
48 needs to be repaired. He asked for clarification on the location of the
49 property line and how the pathway will fit in. He is concerned about further
50 encroachment into the river. There will be a security issue at night
51 because of the building's saw-tooth design, which allows secluded areas
52 for undesirable activities. It will be important to provide adequate security
53 lighting in these areas. Mr. Lundquist noted that the existing cyclone fence
54 is at the top of the bank and isn't the property line. The pathway will fit in
55 between the building and the river. The City will pay for the pathway
56 construction and take ownership of the pathway land, then deed back a
57 use easement to AT&T. Some encroachment into the area adjoining the
58 river will happen anyway because of a need to locate reinforcement
59 improvements in that area. It was determined that the facility itself cannot
60 be relocated due to the equipment that is involved.

61 In response to a question from **Commissioner Cooper**, Mr. Lundquist
62 confirmed that CDFW's only concern with the pathway is the introduction
63 of the public into the area.

64 **Chairman Manfredi** opened the public hearing.

65 **Clarence Luvisi**, Rosedale Road, believes that the project is a win-win
66 situation. He is glad to see that a tree of heaven will be removed. He
67 asked whether five feet is sufficient for both pedestrians and bicycles. The
68 City should plan for bathrooms at this end of town. Mr. Lundquist
69 responded that the width is not sufficient for both pedestrians and
70 bicycles, and that signage at the ends of the path will request that cyclists
71 walk their bikes.

72 **Chairman Manfredi** closed the public hearing.

73 **Commissioner Kusener** believes that the hours of construction included
74 in the mitigation measures seem restrictive and wondered if they could be
75 expanded. He also asked whether any spaces in the adjoining parking lot

76 would be used by the contractors. Mr. Lundquist responded that the hours
77 of operation were based on comments from adjoining Calistoga Inn, which
78 is concerned about disturbances to their guests and diners, and the hours
79 have been accepted by the applicant. He noted that they apply only to
80 heavy equipment use, which will be of limited duration.

81 **Richard Johnson, AT&T**, would like to be able to stage construction
82 before 8 a.m. He hopes to just use the parking two spaces that AT&T
83 currently has access to. Mr. Lundquist confirmed that staging would be
84 allowed prior to 8 a.m.

85 A motion by **Commissioner Bush** and seconded by **Commissioner**
86 **Kusener** to adopt a resolution adopting a Mitigated Negative Declaration,
87 finding that with the inclusion of mitigation measures, the project will not
88 have a significant adverse impact on the environment, carried
89 unanimously.

90 A motion by **Vice Chairman Coates** and seconded by **Chairman**
91 **Manfredi** to adopt a resolution approving a conditional use permit
92 application allowing the stabilization of the equipment building by installing
93 helical anchors and constructing a grade/beam retaining wall along the
94 south side of the structure located at 1310 Lincoln Avenue carried
95 unanimously.

- 96 **2. Zoning Code Amendment ZO 2013-3:** Consideration of a
97 recommendation to the Calistoga City Council on a text amendment to the
98 Calistoga Municipal Code. This amendment was initiated by the City of
99 Calistoga and would add protection for farmers who use accepted and
100 standard farming practices against nuisance suits, even if the farming
101 practices harm or bother adjacent property owners or the general public.
102 The ordinance would also require disclosure about the potential
103 inconveniences and discomforts associated with agricultural operations.

104 **Planning Director Goldberg** reviewed the reasons for the proposed
105 Code amendment and the types of disclosures about agricultural activities
106 that would be required. She noted that comments on the preliminary draft
107 ordinance had been received at a community meeting and many had been
108 incorporated into the draft before the Commission.

109 In response to questions and comments from **Commissioner Kusener**,
110 Ms. Goldberg explained that the City's proposed regulations are
111 essentially the same as the County's right-to-farm provisions and would
112 co-exist with them. She confirmed that purchasers of property in Calistoga
113 already sign a document acknowledging that they are aware of the
114 potential impacts of agricultural operations, so the only change would be
115 to provide the City's language to the brokers and realtors.

116 In response to a question from **Commissioner Cooper**, Ms. Goldberg
117 explained that the ordinance isn't intended to protect the City from being

118 involved in lawsuits. However, a plaintiff or defendant could cite the right-
119 to-farm provisions in the basis for their suit. She doesn't believe that this
120 type of lawsuit has ever been filed in Calistoga. The ordinance is trying to
121 avoid potential problems.

122 In response to questions from **Chairman Manfredi**, Ms. Goldberg
123 confirmed that burn permits would still be required for agricultural burning
124 and the ordinance wouldn't provide an exemption from any regulations.
125 Bee-keeping is considered an agricultural operation and is allowed in
126 certain zoning districts.

127 **Chairman Manfredi** opened the public hearing.

128 **Dennis McNay**, Foothill Boulevard asked how the ordinance would affect
129 the establishment of new vineyard. Ms. Goldberg responded that the
130 ordinance only applies to agricultural operations that have been in
131 operation for three or more years.

132 In response to a question from **Commissioner Kusener**, Ms. Goldberg
133 explained that City staff would be responsible for making the
134 determination as to whether an operation was using established farming
135 practices and would seek advice from the County Agricultural
136 Commissioner if necessary. There isn't a need to designate the
137 Commissioner as the official arbiter in these matters. She agreed with
138 Commissioner Kusener that agricultural practices are constantly changing
139 and that is why specific practices were not listed because it would never
140 be all-encompassing. The language recognizes the practices used at a
141 certain point in time.

142 **Jim Barnes** suggested that the ordinance could use broad language to
143 describe the types of agricultural practices, then exclude any specific
144 practices that would be objectionable.

145 **Clarence Luvisi** believes that many ideas that were raised at the
146 community meeting have been incorporated into the draft ordinance.
147 However, the ordinance needs to recognize that the City will be involved if
148 a neighbor asks for a declaration of nuisance. The City needs to act as a
149 facilitator between the person complaining and the person being
150 complained about. This is how several issues that have come up
151 elsewhere in the county have been resolved. Such facilitation will avoid
152 problems escalating into a lawsuit. City staff or the Chamber needs to act
153 as facilitator and facilitate communication.

154 **Norma Tofanelli**, representing the Napa County Farm Bureau is
155 encouraged by this ordinance moving forward and by the policy statement,
156 which recognizes that it's important to protect agricultural lands within the
157 city limits. The Bureau encourages good communication between
158 complainants and agricultural operators. Staff can't be expected to be
159 knowledgeable about technical aspects. The ordinance should provide for

160 the County Agriculture Commissioner or Farm Bureau to mediate if the
161 declaration of a nuisance is requested of the City.

162 **Chairman Manfredi** closed the public hearing.

163 **Commissioner Kusener** observed that the City appears to be
164 incorporating State statutes. In addition to placing notices in guest rooms
165 and public areas, visitor accommodations owners should inform potential
166 guests about potential impacts associated with agricultural operations
167 prior to their making a reservation.

168 **Vice Chairman Coates** noted that the ordinance is primarily intended to
169 provide for disclosure. Future lawsuits about agricultural operations aren't
170 the City's responsibility. The City is doing the right thing to provide for
171 disclosure because the agricultural operations are critical to the success of
172 the city. He likes complaints being made to the County Agriculture
173 Commissioner.

174 **Commissioner Bush** suggests that clear language, and not legalese, be
175 used in disclosures.

176 A motion by **Commissioner Kusener** and seconded by **Commissioner**
177 **Cooper** to adopt a resolution recommending to the City Council approval of
178 an amendment to the Calistoga Municipal Code adding protection for
179 farmers from nuisance suits and requiring disclosure about agricultural
180 operations carried unanimously.

181 **H. MATTERS INITIATED BY COMMISSIONERS**

182 In response to questions from several commissioners, Mr. Lundquist provided
183 updates on the status of various projects.

184 **I. DIRECTOR REPORT**

185 Ms. Goldberg advised the Commission that the City Council will consider
186 authorizing the Green Committee to proceed with a voluntary effort to discontinue
187 the use of plastic carry-out bags at next Tuesday's meeting. She also advised the
188 Commission of upcoming agenda items.

189 **J. ADJOURNMENT**

190 The meeting was adjourned at 6:36 p.m. to August 28, 2013.