

# MINUTES

## CALISTOGA PLANNING COMMISSION

August 14, 2013

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

### A. ROLL CALL

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

### B. PLEDGE OF ALLEGIANCE

### C. PUBLIC COMMENTS

There were no public comments.

### D. ADOPTION OF MEETING AGENDA

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

### E. COMMUNICATIONS/CORRESPONDENCE

A letter from Matthew Moye regarding item G.2. was distributed to the Commission.

### F. CONSENT CALENDAR

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

The July 24, 2013 Minutes were accepted as presented.

### G. PUBLIC HEARINGS

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

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

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

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

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

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

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

**Chairman Manfredi** opened the public hearing.

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

**Chairman Manfredi** closed the public hearing.

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

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

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

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

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

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

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

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

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

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

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

**Chairman Manfredi** opened the public hearing.

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

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

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

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

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

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

**Chairman Manfredi** closed the public hearing.

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

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

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

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

#### **H. MATTERS INITIATED BY COMMISSIONERS**

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

#### **I. DIRECTOR REPORT**

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

#### **J. ADJOURNMENT**

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

  
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Lynn Goldberg  
Planning Commission Secretary

