

MINUTES
CALISTOGA PLANNING COMMISSION
October 13, 2021 at 5:30 p.m. via Zoom

1 **Chair Cooper** called the meeting to order at 5:30 p.m. He read a special message
2 concerning the conduct of the virtual meeting in accordance with provisions related
3 to COVID-19.

4 **A. ROLL CALL**

5 Commissioners present: Chair Scott Cooper, Vice Chair Tim Wilkes, Commissioners
6 Alissa McNair, and Doug Allan. Commissioners absent: Jack Berquist. Staff present:
7 Planning Director Zach Tusinger, Associate Planner Samantha Thomas and Planning
8 Secretary Claudia Aceves. Additional Staff present included Police Chief Mitch Celaya
9 and Building Official Brad Cannon.

10 **B. PLEDGE OF ALLEGIANCE**

11 **C. PUBLIC COMMENTS**

12 None.

13 **D. ADOPTION OF MEETING AGENDA**

14 The meeting agenda was adopted as presented.

15 **E. COMMUNICATIONS/CORRESPONDENCE**

16 Planner Thomas reported that staff sent commissioners the last of the
17 correspondence at 3 p.m. for both items and there has not been additional
18 correspondence.

19 **F. CONSENT CALENDAR**

20 1. **Approval of Draft Minutes from the September 8, 2021 meeting.**

21 The consent calendar was adopted unanimously.

22 **G. PUBLIC HEARINGS**

23 1. **Review of Compliance with Conditions of Approval, Use Permit Amendment UP**
24 **2021-9, and Design Review DR 2021-2 for 345 Silverado Trail (APN 011-050-032) –**
25 **Originally Helmer Conditional Use Permit U 2003-12:**

26 Consideration of a use permit amendment and design review to address the property's
27 code violations, ensuring compliance with conditions of approval. The project consists
28 of relocating an existing unpermitted metal barn behind the 20-foot side yard setback,
29 reviewing the design of an existing entrance gate, reviewing existing unpermitted duck
30 and aviary enclosures for non-native bird species in connection with an issued noise
31 nuisance notice of violation, review the abandonment of existing unpermitted garage
32 pads within a potentially sensitive area of the property and relocating the footprint
33 behind the existing main garage, helicopter sculpture, and consider an Erosion Control
34 Plan for trees removed for defensible space be required as a Condition of Approval

35 prior to obtaining building permits. The proposed action is exempt from the California
36 Environmental Quality Act (CEQA) under §15303 of the CEQA Guidelines.

37 **Recommended Action:** Hold public hearing and consider approving portions of the
38 application with conditions and denying other portions.

39 Associate Planner Thomas presents the staff report noting the key issues to address,
40 including unpermitted construction and uses and neighbor complaints about new
41 uses, particularly an unpermitted aviary housing peacocks and other birds. She
42 provides background on the property at 345 Silverado Trail noting that in 2004
43 Planning Commission approved a mitigated negative declaration (MND), design
44 review and use permit. She adds that the residence was completed in 2008 and solar
45 in 2012 with minor improvements since. Thomas lists and describes in detail several
46 violations that occurred on property, most notably the aviaries, as well as tree removal
47 and grading, entry gate, helicopter sculpture, garage pads, metal building, storage
48 building and propane tank, lighting and transient commercial occupancies violations
49 that may not be in conformance with conditions under use permit U 2003-12.

50 Police Chief **Mitch Celaya** comments on the complaints received by the police
51 department by residents of the neighboring mobile home park. He notes that upon
52 arrival on scene, responding officers did not hear the nuisances described in the
53 complaints. He adds that they sent the property owner a notice of violation advising
54 them how to mitigate the issue. Chief Celaya notes that there are two sections of the
55 code related to nuisances that are potentially in violation. He says that officers were
56 instructed to issue a citation next time there is a complaint if the officers observe and
57 document the actual noise.

58 Building Official **Brad Cannon** comments that it is a simple process to bring the
59 unpermitted work to compliance, adding that the structures in question need a building
60 permit and would need a design professional to provide plans. He notes that he'd need
61 clarification on the storage building use.

62 **Planner Thomas** lists the items that staff recommends for approval and what is
63 recommended for denial.

64 **Vice Chair Wilkes** asks for clarification in terms of the wetland analysis whether the
65 2003 use permit clearly documented the land now covered in concrete as wetlands
66 and Planner Thomas confirms, noting it would be difficult to determine if wetland is
67 existing now.

68 **Vice Chair Wilkes** asks about the total square footage of the unpermitted construction
69 additions including new slabs, and metal barn and storage shed and Planner Thomas
70 responds that the information was not received.

71 **Vice Chair Wilkes** asks if the erosion control plan underway will be reviewed prior to
72 building permit issuance and Planner Thomas confirms. Regarding the barn, he asks

73 about the setback and supplemental height restrictions and Director Tusinger says
74 those recent code amendments to accessory structure standards apply to single
75 family residential zones. Planner Thomas adds that this development has its own
76 height limit of 28 feet.

77 **Chair Cooper** asks about the timeframe if commissioners were to approve the
78 recommendations and Planner Thomas says it could be dependent on each item.
79 Building Official Cannon adds that building permits are active for one year.

80 **Commissioner McNair** clarifies that Chair Cooper may have been talking about a
81 time limit, since most of the items already have something due and Planner Thomas
82 suggests the applicant would have to submit items for staff review within 30 days of
83 approval.

84 **Commissioner McNair** asks if there was a survey as part of previous projects that
85 would have shown the trees where brush was removed. Planner Thomas says there
86 was a landscape plan as part of the MND and mentions their observations from a site
87 visit, noting that trees were visibly cut.

88 **Commissioner Allan** asks for clarification on the comment about “minor
89 improvements” that were made, and Planner Thomas confirms they were
90 improvements made prior to the property being purchased in July 2020.

91 **Chair Cooper** asks if staff recommends complete removal of the aviaries or if there is
92 room to reduce in size. Planner Thomas responds that staff recommends complete
93 removal because it does not fit within an allowed use permit.

94 **Commissioner Allan** asks for clarification on what in the code the city does allow,
95 and Planner Thomas says residents can have up to five chickens and no roosters with
96 no verbiage on other bird types.

97 Architect, **Benjamin Hertz**, says the existing site is 7.3 acres and currently the existing
98 structures make up 4.2 percent of space usage, noting that if the unpermitted additions
99 are approved, it would add up to about 5 percent building coverage of the allowed 25
100 percent on the site. He mentions a biologist will be able to determine the outline of the
101 wetlands. He says he has the original survey showing that certain areas on Mt.
102 Washington were already bare. Mr. Hertz mentions that an erosion control plan is
103 technically not required because it is an area less than one acre and less than 30
104 percent slope, in this case 25 percent. He comments that he has photo proof of the
105 helicopter being a “sculpture.” He says the metal barn is used as tool storage and was
106 built by a company that meets construction standards. He also addresses the propane
107 tank and lighting, noting they’ve ordered the shade cover pieces to the lights.
108 Regarding the birds, he says there are ways to mitigate sound.

109 **Vice Chair Wilkes** asks for clarification on whether Mr. Hertz is the architect on the
110 new buildings and Mr. Hertz says he will become the architect and clarifies that the
111 slab is not engineered.

112 **Vice Chair Wilkes** asks how no one thought to get a building permit. Mr. Hertz says
113 he wasn't involved in the project at that time, adding that metal building companies
114 don't care about the building permits.

115 **Chair Cooper** expresses concern about the open flame on the entry gate and asks
116 Building Official Cannon how safe they are. Cannon responds that they don't really
117 exist in Calistoga and the fire chief does not typically approve them.

118 **Commissioner McNair** also expresses concern for the gate. She asks when the
119 lighting was installed and if there are cut sheets and Mr. Hertz says he has cut sheets
120 that he can provide and thinks they were installed in April 2021.

121 **Chair Cooper** asks if Calistoga is the only jurisdiction having authority over the
122 violations and Cannon responds that it is just Calistoga from the building standpoint.

123 Attorney, **Paul Dohring**, comments that his purpose as the lawyer is to ensure that
124 his client has due process to get approval. He comments that he focused on the
125 wording of the resolutions and conditions and offering proposed language. Mr.
126 Dohring says he thinks it is premature to weigh in on the wetlands issue, adding that
127 they agree with most of the recommendations by staff. He argues that the current
128 ordinance is inconsistent with the general plan in terms of light agricultural uses, an
129 option which was eliminated from this parcel. He also argues that aviaries are allowed
130 in rural residential zones. He adds that he is willing to work with staff on language of
131 the conditions.

132 Applicant, **Rick Ali**, comments that he didn't realize he needed a building permit on
133 the garage slab. He addresses the entry gate noting that the fire chief suggested a
134 Knox box and other safety measures he could follow. Mr. Ali comments that the noise
135 complaints are that of foxes and not his peacocks, adding that the enclosure was
136 necessary as his birds had gotten attacked at night.

137 **Chair Cooper** says that while he understands Mr. Ali's concerns over the birds, there
138 is also a 95-signature complaint that needs to be addressed.

139 **Mr. Ali** suggests they review the complaints based on the city code's nuisance hours
140 between 10 p.m. and 7 a.m. because he believes the birds do not create noise at
141 night. He asks whether any more complaints have been received since August.

142 **Chief Celaya** responds that the last call for a noise complaint was on August 19th,
143 noting that there is a section in the code that covers noise complaints during daytime
144 hours, but the criteria and standards are higher.

145 **Commissioner Allan** comments that although there haven't been any formal
146 complaints since August, he has received complaints from community members.

147 **Vice Chair Wilkes** asks Mr. Ali if when he purchased the property he read the escrow
148 documents that would have mentioned the 2003 use permit and Mr. Ali admits that he
149 did not know about the use permit. Vice Chair Wilkes adds that by purchasing the
150 property, Mr. Ali agreed to the terms that came with the property and it was his
151 responsibility to be aware of it, adding that there is a list of things clearly in violation
152 and no responsibility has been taken, and Mr. Ali apologizes and takes responsibility.

153 **Vice Chair Wilkes** asks Mr. Dohring if commissioners were to accept staff's
154 recommendations, he would oppose that without changes and Mr. Dohring responds
155 that it is up to his client, adding that they are in a cooperative spirit to resolve the
156 issues.

157 **Vice Chair Wilkes** comments on ad hominem in Mr. Dohring's letter about the
158 neighbor's complaints and calls it unnecessary. He asks about the comment on
159 "alleged building violations," which Vice Chair Wilkes says were obvious and Mr.
160 Dohring does not contest.

161 **Vice Chair Wilkes** referencing the letter brings up Mr. Dohring's comment on the
162 Planned Development overlay being obsolete and if the intention is to revisit the
163 Planned Development Agreement and Mr. Dohring says no.

164 **Vice Chair Wilkes** comments on the letter's mention of professionals that would need
165 to be hired to resolve certain violations, noting that they would have needed to be
166 hired prior to construction rather than after and Mr. Dohring agrees.

167 **Vice Chair Wilkes** asks that precise documentation be included when Mr. Dohring
168 claims false accusations. He asks Mr. Dohring about the mention of Mr. Ali's religion
169 and the purpose and Mr. Dohring responds that it was conveyed by his client as a
170 matter of fact to suggest that the birds were not for commercial practice but are
171 important to him.

172 **Vice Chair Wilkes** asks if the Commission chose to take the staff's recommendations,
173 would Mr. Ali be in opposition and Mr. Dohring says his client would prefer to have
174 more process in terms of the garage relocation and aviaries.

175 **Planner Thomas** clarifies that since sending the first notice of violation in July, staff
176 had asked for documentation regarding all unpermitted activity and not enough
177 information was received to permit anything prior to taking the item to the Planning
178 Commission.

179 During public comment, **Suzanne Baker** comments that she does not want to be a
180 bad neighbor by calling the police but points out that their homes are close and wants

181 to be taken seriously on the noise concerns including peacocks, parties, and
182 motorized vehicles in the driveway.

183 **Chair Cooper** asks Ms. Baker if the peacocks are loudest and she confirms, adding
184 that there are a lot of them.

185 **Lori Hood** comments that they object to the owners request for use permit
186 amendments, specifically the aviaries on property, as they are not peaceful, and asks
187 commissioners to deny the request. She adds that they have devalued their properties
188 and obscured views of Mt. Washington.

189 **Chair Cooper** comments that many other noises considered annoying comes from
190 being neighbors.

191 **Mr. Ali** comments that a tree that was gone had fallen and was not cut.

192 **Vice Chair Wilkes** says he'd prefer to continue the item because there are too many
193 unanswered questions, adding that he is uncomfortable taking action after receiving
194 Mr. Dohring's letter based on legalities.

195 **Director Tusinger** comments that it is the commission's decision whether they want
196 to proceed or consult with the city attorney and reiterates that staff needed to bring
197 the item to the commission's attention although pieces are missing.

198 **Vice Chair Wilkes** says that to him the noise is an unresolved matter because there
199 is a property owner denying the noise issue and 95 neighbors saying otherwise.

200 **Mr. Ali** says he does not deny their complaints but believes the noise is during the
201 day and challenges the complaints because police could not document the noise in
202 question. He suggests it is not an issue if the noise does not occur between the hours
203 of 10 p.m. and 7 a.m.

204 **Chair Cooper** notes that it is also likely that a majority of the neighboring mobile home
205 residents are home during the day.

206 **Commissioner McNair** asks Mr. Ali when the peacocks were put on the property, and
207 he responds December of 2020. She asks if the aviary is denied, would the peacocks
208 remain on site without the netting, or would he relocate them and he says they would
209 likely die without the netting adding that he has other birds that don't make noise.

210 **Director Tusinger** comments that per staff's interpretation, the aviaries and peacocks
211 are not an allowed use, noting that if commissioners decided it was a similar use
212 determination and could be permitted with a use permit, one required finding is that
213 the proposed use does not affect neighboring properties, which would be very difficult
214 based on the neighbor complaints.

215 **Commissioner McNair** comments that although initially hesitant to approve items
216 without all the information, her understanding is they can move forward because they

217 are providing city staff the tools they need to review the documentation and make
218 those findings.

219 **Chair Cooper** says his concern with continuing the item is that staff has waited a long
220 time for the applicant to address some of these issues and to continue might take the
221 pressure off the applicant to move forward with document submittals. He asks if it is
222 possible to make a motion and continue to another date.

223 **Commissioner McNair** says she is looking to enable city staff to proceed on the
224 various items that require feedback and provides a timeline for documentation
225 submittals. She clarifies that she asks about the aviary because the issue is not only
226 the structure itself but the noise of the birds, highlighting the gap in the local ordinance.

227 **Mr. Ali** mentions that he is aware of neighboring properties that keep roosters. He
228 asks commissioners if they'd be willing to visit his property and see the birds.

229 **Commissioner Allan** comments that he would be in favor of attempting to make
230 progress at this meeting to provide feedback to staff. He adds that the challenge is
231 that there are so many violations to provide feedback on but is worthwhile.

232 **Chair Cooper** says he would be in favor of making a motion at this meeting.

233 **Vice Chair Wilkes** asks for clarification that staff recommends approving or denying
234 specific items and if approved as presented, would not come back to the commission,
235 which is his concern, as certain items were described to return for review and there
236 are too many unknowns. He adds that if a motion can be amended for staff to return
237 the item after specific findings, he'd be fine with it but if they will not see this item again
238 his original position stands.

239 **Director Tusinger** says he is hesitant to amend, adding that if commissioners want
240 to continue, they need to be clear on the date certain and provide staff direction on
241 specific items they require additional information on.

242 **Commissioners** discuss how to proceed in terms of whether they will make a motion
243 and how based on the information that has been provided at this meeting, preferring
244 to go line by line.

245 **Chief Celaya** comments that he understands the challenges in looking at the
246 information provided but moving forward staff needs direction and movement in
247 certain areas.

248 **Mr. Hertz** comments that it was his understanding they would receive some resolution
249 and conditions to move forward with what documentation is applicable to provide, such
250 as the erosion control plan.

251 **Commissioner Allan** says that is not complete because the information was not
252 provided, so to him it is not approved.

253 **Director Tusinger** suggests a blanket continuance with direction to staff or going line
254 by line if there is consensus on any of the items.

255 **Commissioners** discuss how to approach moving forward and resolve that Planner
256 Thomas read through each item individually for commissioners to come to a
257 consensus.

258 **Planner Thomas** begins the process of reading each item and discussion ensues
259 between commissioners on the first few items.

260 **Director Tusinger** with concerns of keeping a clear record, recommends continuing
261 the entire item two weeks to allow staff to get all the requested materials needed for
262 commissioners to make a final decision.

263 A motion is made by **Vice Chair Wilkes** that the Planning Commission continue for
264 two weeks the item DR2021-2 and UP2021-9.

265 **Director Tusinger** asks for confirmation that the applicant can participate in the next
266 hearing and if they can provide the additional information and work with staff in less
267 than two weeks and Mr. Hertz confirms.

268 The motion is seconded by **Commissioner Allan** and **Vice Chair Wilkes** adds if
269 during the two weeks staff can harden up on the conditions to help build consensus
270 down the line.

271 **2. Prohibition on New Gas Station Land Uses – Zoning Ordinance Amendment**
272 **ZOA 2021-1:**

273 Consideration of a recommendation to the City Council of a proposal from the
274 Calistoga Green Committee of a zoning ordinance amendment to the Calistoga
275 Municipal Code (CMC) Title 17, Zoning to codify a prohibition of new gas station land
276 uses in all zoning districts and to provide uniform regulations and development
277 standards for modifications, maintenance, operation, and discontinuation of
278 fueling/gas station uses and facilities in the City. The proposed action is exempt from
279 the California Environmental Quality Act (CEQA) under §§15378, 15061(b)(3), 15301,
280 15303, 15304, and 15308 of the CEQA Guidelines.

281 **Recommended Action:** Hold public hearing and consider recommending Municipal
282 Code Amendments to the City Council.

283 Associate Planner Thomas provides the staff report. After significant technical
284 difficulties with Zoom became apparent, **Chair Cooper** opens and leaves open the
285 public hearing. A motion by **Commissioner Allan** to continue the item is seconded by
286 **Commissioner McNair**.

287 **H. MATTERS INITIATED BY COMMISSIONERS**

288 None

289 **I. DIRECTOR'S REPORT**

290 **Director Tusinger** reports that he is very pleased with Associate Planner Thomas's
291 exemplary performance thus far. He says that Interim City Manager Brad Kilger, who
292 has a planning background, will be assisting planning staff with the coming meetings.
293 He adds that there will also be outside help coming on board during the time the city
294 works to fills his position. He mentions that commissioners are welcome to watch the
295 next City Council meeting where staff will present an update on different Planning and
296 Building projects. He thanks the Commission for the privilege of having been able to
297 work with them over the last several years.

298 **Commissioners** thank Director Tusinger for his hard work for the city.

299 **J. ADJOURNMENT**

300 On a motion from **Chair Cooper** that is adopted unanimously (4-0), the meeting was
301 adjourned at 8:35 p.m.

Claudia Aceves, Secretary